

**Show Cause Hearings as Mini-Trials? An Examination of Court Delay in the Context of an
Ontario Bail Court**

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ABSTRACT

In Canada, the incarcerated population on remand (awaiting a bail hearing or awaiting a trial) is increasing. At the same time, the number of accused persons beginning the criminal process in Ontario bail court rose steadily between 2011 and 2019 (with less comparable data during the COVID period). As well, the *Supreme Court of Canada* has identified that significant court delay is occurring in Canada, in contravention of certain protected rights and freedoms under the *Charter* regarding bail. While much research has illustrated that court delay continues to be a persistent problem in Canada, there is virtually no research examining how the specific bail process of show cause hearings may be contributing to it. Adopting a quantitative research methods approach, supplemented by qualitative methods, this study looks at the prevalence of court delay and the potential emergence of “mini-trials” within 25 show cause hearings, from an Ottawa bail court in 2017 and 2018. Analyses suggest that unnecessary and unreasonable delay in show cause hearings occurs frequently, indicating that the emergence of some disconcerting distortion in this bail process may be occurring. These findings are considered not only within the backdrop of the bail/remand crisis in Ontario specifically but also within the broader context of risk averse behaviour in today’s society and as a result, in the Canadian criminal justice system.

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1 – INTRODUCTION

For at least the last half century (if not longer), Canada has demonstrated an ability to maintain relatively stable imprisonment rates. For those who recognize the deleterious effects of incarceration on the lives of the offender, their families and society generally, this pattern over time may be seen as a significant accomplishment. In comparison, most other western democratic nations have been much less successful. In this regard, many nations comparable to Canada have shown significant increases over time. For example, the United States has experienced a dramatic rise in its recourse to imprisonment since the 1970s (Webster & Doob, 2007). Moreover, England/Wales - the other nation with which Canada shares numerous cultural, historical, economic and administrative similarities - has also shown a significant increase over time in their recourse to imprisonment (Webster & Doob, 2020).

Nevertheless, while the crime rate and the overall rate of incarceration have remained relatively stable over the last 50 years in Canada (Webster & Doob, 2007), the national rate of remand admissions has been increasing steadily since the 1970s, with a 300% increase documented over the last four decades (Webster, 2023). The remand population refers to those legally innocent individuals incarcerated in correctional institutions either awaiting a bail hearing or awaiting trial after being denied bail.¹ The remand rate in 1978 was just under 13 individuals per 100,000 residents whereas in 2009, it had increased to almost 50 individuals per 100,000 (Webster, 2015). Indeed, the extent and persistence of this problem are alarming. More recently, the gravity of the growing remand problem can be demonstrated easily. For example, in 2004, 51% of the

¹ The remand population includes those who are formally denied bail, as well as those who informally consent to detention having decided to forego a bail hearing. Although this population also includes those who have been found guilty and are awaiting sentencing, this number is thought to be a small proportion (Doob, Sprott & Webster, 2017).

incarcerated population in Canada consisted of adults on remand (Correctional Services Program, 2017). By 2009, this proportion had risen to 58% of the custodial population (Porter & Calverley, 2011). Just as disconcerting, a comparison of rates between 2004 and 2014 demonstrates that the remand rate had grown by 39% (Correctional Services Program, 2017). In 2014/2015, the remand population constituted just over 62% of prisoners in Ontario correctional institutions (Doob, Sprott & Webster, 2017).² Today, the remand population exceeds the custodial population in provincial correctional institutions by as much as 70% on an average day (Malakieh, 2020).

As the remand population in Canada has continued to increase over time, thus becoming increasingly more problematic, the search for explanations has intensified. Within this context, the bail process has been identified as a significant contributor. This is reflected in both the increasing number of cases starting in bail court as opposed to other avenues, as well as the length of these hearings. Any delays in court processing time to reach a final decision regarding interim release necessitates a lengthier stay in remand for an accused.

In the last few decades, Ontario has experienced a significant increase in cases beginning in bail court, from just under 40% of cases beginning in the bail process in 2001 to just over 50% in 2007 (Webster, 2009). In addition, the number of cases that took three or more appearances in bail court increased by almost 10% between 2001 and 2007 (Webster, 2009). Further, 28% of cases spent four or more days in the bail process in 2001, jumping to roughly 33% spending the same number of days in the bail process in 2007 (Webster, 2009). And the situation has only worsened over time. Indeed, Doob, Sprott and Webster (2017) found that in 2013/2014, cases in Ontario bail court continued to take an increasing number of appearances to be completed. When considering

² It is important to note that up-to-date data on certain issues, such as whether a case started in bail court, are not typically available in Canada. As such, it is necessary to find “special” studies such as Doob, Sprott, & Webster (2017) to look at certain issues, rather than Statistics Canada data.

violent charges and administration of justice charges,³ a notable number of cases are taking more than 1 year to reach a final resolution (Doob, Sprott & Webster, 2017). Additionally, in 2014/2015, just over 10% of bail cases required five to seven bail appearances to complete the bail process (Doob, Sprott & Webster, 2017). Moreover, in 2019, about 45% of cases in Ontario began the criminal court process in bail (Ontario Court of Justice, 2021). Further, in 2019 about 26% of disposed cases in Ontario began in bail court and were finalized with a release or detention order, while almost 19% of cases began in bail court and did not result in a final bail outcome (Ontario Court of Justice, 2021).

While the presumption of innocence is protected under section 11(b) of the *Charter of Rights and Freedoms*, which calls for punishment to be applied only after being found guilty, pre-trial detention undoubtedly serves as punishment – in practice - before any finding of guilt. Indeed, although remand is not intended to punish the legally innocent, pre-trial detention imposes a number of deprivations on those in remand custody that unintentionally have serious repercussions on the accused's personal life (Feeley, 1979; Mitchell, 2015; Perrin, 2019). Notably, pre-trial incarceration can pose significant challenges to maintaining employment, housing, and personal relationships. In particular, simple contact with the justice system contributes to a higher rate of employment termination and/or a decrease in income (Webster, 2009).

In addition, being remanded to custody for any period of time can result in issues with housing, including the inability to pay rent or utilities, contributing to a greater likelihood of homelessness (Bergin, Ropac, & Randolph, 2022). Finally, familial and spousal relationships can

³ An administration of justice offence is one in which an individual fails to comply with certain conditions that they are legally mandated to obey, typically in relation to previous release orders or sentences. In the context of bail hearings, they typically fall under three types of offences: failure to comply with a court/release order (FTC) (*Criminal Code* section 145(5)), failure to comply with a probation order (FTC probation) (*Criminal Code* section 733.1), or failure to appear in court (FTA) (*Criminal Code* Section 145(3)).

be significantly affected by pre-trial detention, due to the inability to maintain effective communication, missing family events, and being unable to provide childcare and other family members (Bergin, Ropac, & Randolph, 2022). All of the devastating effects of pre-trial incarceration on accused persons who are still legally innocent indicate a significant level of pre-trial punishment.

In 1972, recommendations from the *Ouimet Report* (Canadian Committee on Corrections, 1969) were adopted into the *Bail Reform Act* (1972). In particular, an explicit statement was added, reminding legal actors that the presumption of innocence should prevail in bail hearings such that “release was to be the rule and custody the exception” (McLellan, 2009, p. 57). While the presumption of innocence remains a central tenet today of the Canadian criminal justice system, including around bail, it is equally true that it has become increasingly shrouded by an obsession with risk management. In the current risk averse society, which is primarily concerned with preventing and limiting harm to law-abiding citizens (Beck, 1992), bail orders with conditions often criminalize ordinary behaviour, and strengthen state power to manage, control and punish individuals who are legally innocent (Myers, 2017). Equally concerning is the increased tendency of police to detain accused for a bail hearing, which is also indicative of an obsession with risk management because they would rather avoid being responsible for an accused who may offend while on bail (Doob & Webster, 2012).

Lengthy case processing in bail court continues to persist. In fact, an increase in both the number of days and the number of appearances taken to reach a final decision in bail court continues to be observed. Just as importantly though, these two outcomes almost certainly interact with the wider risk averse climate. Inflated concerns with minimizing risk when determining whether accused in bail court can be released until trial can easily lead to protracted case

processing. In fact, this type of interactive modelling is at the root of much of the recent scholarly work on bail court decision-making processes generally (Myers, 2009; Yule & Schumann, 2019).

One might argue that the same interactions might also extend to some bail court proceedings. Most notably, one might think of show cause hearings – that is, a bail hearing in which a prosecutor must “show cause” as to why the accused should be detained in remand while awaiting trial.⁴ This procedure has always been intended to be relatively short in length. Yet, in a recent report on significant and persistent issues on bail in Canada, Wyant (2016) points to how these proceedings are yet another contributor to court delay. In terms of explanation, he suggests that delays in the court processing times of show cause hearings are related to the increasing concern with risk (Wyant, 2016). Specifically, risk-averse decisions made by Crowns and Justices of the Peace may be contributing to the transformation of show cause hearings into “mini-trials” such that they no longer serve their initial purpose of being brief procedural hearings (Wyant, 2016).

Perhaps not surprisingly, the search for solutions to the growing problem of court delay in Canada has led to even greater attention – both scholarly and legislatively – over the most recent decades. As one potential remedial avenue, show cause hearings actually emerged as a potentially important source of additional delay. Unfortunately though, there has been virtually no research of any kind on this bail court procedure to-date. More notably within the current context, even less scholarly attention has been given to its link to lengthy case processing times in bail court. As such, this thesis aims to provide a detailed examination of show cause hearings,⁵ including the

⁴ In a “reverse onus” case, the defence must “show cause” as to why the accused should be released on bail awaiting trial.

⁵ Note that in the *Criminal Code of Canada*, a show cause hearing is simply referred to as a “bail hearing”. Due to the different kinds of bail hearings heard in the Ottawa Bail Courts, the term “show cause hearing” will be adopted for this study to refer to the specific type of bail hearing as described above.

types of cases which require them, the ways in which the process of this hearing works, and the types of outcomes that result. It aims to illustrate how the bail process - specifically show cause hearings - contributes to the increasing persistence of court delay and how the current risk averse mentality of the justice system (and, by extension, the actions/decisions of court actors) influence the process and outcomes of show cause hearings, further exacerbating wider (practical as well as principled) problems rooted in an ever-expanding remand population. This thesis will be one of first research projects that examines this bail court procedure and its potentially significant impact on the rest of the justice system, with a particular focus on court delay. More specifically, this thesis aims to answer the following research question: Is persistent court delay present in show cause hearings, and if so, what is the outcome and/or impacts of it on the greater bail process?

To this end, this thesis begins in Chapter Two with an overview of the bail literature in Canada. It presents the general findings in support of the existence of a risk averse mentality within the current bail system as well as its impact on court processing delays in relation to bail hearings. Together, these literature topics converge within the specific context of show cause hearings, providing the conceptual framework or justification for the empirical component of this thesis. Chapter Three details the methodological approach to this research, and all related decisions and thought processes involved in its execution. The data are presented and analysed in Chapter Four, providing both quantitative and qualitative findings regarding show cause hearings conducted in an Ontario Bail Court. Both inferential and descriptive statistics are employed such that a detailed account is created relative to the characteristics of the cases within this bail court, as well as case processes and outcomes. These statistics are supported by important contextual factors, such as the reasons given in the courtroom for certain kinds of decisions or procedures. Lastly, Chapter Five provides an in-depth discussion of the research findings presented in the previous chapter. Specific

focus is given to the theoretical implications of court delay and risk aversion as outlined in Chapter Two. Chapter Six concludes the thesis with a discussion of the limitations of the current study, directions for future research and policy recommendations to address the issues discussed.

2 - LITERATURE REVIEW

2.1 - PAINTING THE REQUISITE PICTURE: THE ISSUE OF COURT DELAY IN CANADA

2.1.1. The Problem(s) of Lengthy Case Processing Times

It is no secret that Canada's criminal justice system is plagued with issues related to delays within the courtroom. Many academics and experts (Dandurand, 2014; Doob & Webster, 2012; John Howard Society of Ontario, 2013; Myers, 2015; Webster, 2009; Wyant, 2016), and parliamentary bodies (Runciman & Baker, 2017) have discussed the magnitude of court delay in Canada and criticized the justice system for its continuing existence. In provincial courts, criminal court processing times have been steadily increasing over the past decades. Indeed, Webster and Doob (2003), found that in 1998, in six Canadian jurisdictions⁶ the proportion of criminal cases that spanned 8 months or more to completion was 20.5%. In comparison, the proportion of criminal cases that took 8 months or longer to complete rose to 24.5% in 2001 (Webster & Doob, 2003). Even twenty years ago, signs of a considerable increase in the proportion of cases with lengthy completion times over a relatively short time period were already seen (Webster & Doob, 2003). Similarly, the median case completion time for criminal court cases in provincial courts across Canada (excluding municipal courts from Quebec due to inaccessible data) in 2010/2011 was reported to be 106 days (Maxwell, 2018). More recently in 2015/2016, data for the same provincial

⁶ These jurisdictions included Newfoundland and Labrador, Nova Scotia, Quebec, Ontario, Saskatchewan and Alberta.

courts across Canada show the median case processing time had increased to 112 days (Maxwell, 2018). Equally disconcerting, while more than 75% of provincial court proceedings were completed within 9 months, roughly 6% exceeded 18 months (Maxwell, 2018). It is important to note that of this 6%, approximately 30% took in excess of 30 months to reach completion (Maxwell, 2018). Taken together, these data suggest that court processing times are increasing dramatically. More importantly, it has been noted that this increase is not rooted simply in problems of backlog. Rather, cases are also taking more court time than in prior years (Webster & Doob, 2004).

Scholarly work has identified the prevalent issue of court delay in Canada. At the same time, research has also attempted to identify potential sources of this problem. Notably, a high rate of unreasonable or unjustifiable adjournments has been recognized as a principal source of this delay (Myers, 2015; Webster, Doob, & Myers, 2009; Wyant, 2016), along with ineffective use of active court time (Myers, 2009; Webster, 2009). Indeed, the rate of adjournments has been increasing over the past few decades. Webster, Doob and Myers (2009) found that in a Toronto bail court, 15% of cases in 1974 were adjourned whereas 63% of cases were adjourned in 2006. Particularly when found to be unjustifiable (in terms of moving the case toward resolution), a high rate of adjournments not only contributes significantly to lengthy case processing times but has the potential to also threaten the proper administration of justice outlined by the *Criminal Code*. Yet, the consequences of court delay within the bail process extend far beyond operational, practical or legal concerns/issues. Rather, they can also extend to violations of the *Charter of Rights and Freedoms*. Indeed, the right to trial within a reasonable time limit, as well as the right to reasonable bail are both protected under the *Charter*, and have been interpreted by the *Supreme Court* on numerous occasions within the context of court delay.

2.1.2 - Right to Trial Within a Reasonable Time Limit: Court Delay v. *The Supreme Court of Canada*

An additional problem that arises from unreasonable court delay is that of potential infringements on Canadians' constitutional rights, specifically that of the right to trial within a reasonable time limit. Indeed, timeliness is of "fundamental importance in the criminal justice process from the points of view of efficiency, fairness, human rights and justice" (Dandurand, 2014, p. 388). As the *Charter of Rights and Freedoms* (1982) includes the right to be tried within a reasonable time if charged with an offence (s.11(b)), it is certainly of great priority to address delays within the criminal justice system that could potentially undermine this constitutionally protected duty.

One of the first *Supreme Court of Canada* cases that specifically considered the issue of court delay within the criminal justice process was *R. v. Askov* (1990), in which an accused was faced with over two years of delays between arrest and trial. Importantly, almost all of them were attributable to "institutional" delays⁷ which the *Supreme Court* labelled as "excessive and unreasonable" (*R. v. Askov*, 1990). In this case, the *Supreme Court* outlined the importance of limiting court delay to the greatest extent possible, with emphasis on the presumption of innocence and community faith in the justice system (*R. v. Askov*, 1990). For the former, the Court stated that any prejudice that may arise against the accused due to the failure to try them within a reasonable time limit is not a "necessary incident of our justice system" and thus must be avoided (*R. v. Askov*, 1990). For the latter, the Court explained that community faith in the justice system, while not explicitly protected under section 11(b) of the *Charter*, is implicitly included given that "a fair and

⁷ Institutional delay is court delay that can be attributed to a lack of institutional resources within the court (*R. v. Morin*, 1992).

balanced criminal justice system simply cannot exist without the support of the community” (*R. v. Askov*, 1990). The community has a vested interest in ensuring trials within a reasonable amount of time both to satisfy the need to have those who have offended dealt with according to the law, and to have accused persons treated fairly and justly (*R. v. Askov*, 1990). In its decision, the *Supreme Court* suggested that moving forward, institutional delays should be limited in order to avoid violating *Charter* rights under section 11(b) as well as the need to ultimately invoke a stay of proceedings as a consequence (*R. v. Askov*, 1990).

The right to trial within a reasonable time period came - once again - to the attention of the *Supreme Court* a short while after *R. v. Askov* (1990), in *R. v. Morin* (1992). This case dealt with an accused who had faced over 14 months of delays between their time of arrest and their trial (*R. v. Morin*, 1992). In response, the *Supreme Court* explained that while institutional delay in the courts is inevitable due to resource limitations, there is a point at which institutional delays can no longer be tolerated (*R. v. Morin*, 1992). Institutional delays can include factors such as the unavailability of counsel at certain times due to the fact that they are managing many cases at a time, unavailable evidence, legal assistance funding problems, and more (Dandurand, 2014). The Court in *Morin* echoed its position in *Askov* in which institutional delay must be limited as much as possible. However, in *Morin*, the *Supreme Court* stated that the guideline for reasonableness outlined in *Askov* should not be applied in a mechanical fashion, with no flexibility (*R. v. Morin*, 1992). Thus, in *R. v. Morin* (1992), the *Supreme Court* provided a framework for delays and circumstances that would be considered exceptional, while also emphasizing that the framework must be applied flexibly.

While these two *Supreme Court* cases involving the right to trial within a reasonable time were meant to not only pressure the courts to eliminate such delays but also provide guidelines in

order to do so, court processing delay persisted. Not long after the decision and recommendations made in *R. v. Askov* (1990), it was found in 2002 that over a five-year period, almost 27% of criminal court trial cases in Canada took more than 8 months to be resolved in provincial courts (Webster & Doob, 2004). Thus, it was clear that the suggestions made in *Morin* and *Askov* were not being implemented in practice as much as they should be. Further, in 2016, yet another *Supreme Court* case was handed down, again involving section 11(b) *Charter* rights. In *R. v. Jordan* (2016), the *Supreme Court of Canada* outlined “strict time limits” that were to be abided by in all criminal proceedings in order to ensure that the rights of an accused enshrined in section 11(b) of the *Charter* are not infringed (Runciman & Baker, 2017, p. 16). Specifically, *R. v. Jordan* deals with the case of an individual who had been accused of a crime and experienced more than four years of delays between the time of charging and the end of the trial (*R. v. Jordan*, 2016). While guidelines for staying criminal proceedings (as a remedy for exceptionally long delay) were outlined initially in the two prior *Supreme Court* decisions in *R. v. Askov* (1990) and *R. v. Morin* (1992), it became clear to the *Supreme Court* during the submissions in *R. v. Jordan* (2016) that new guidelines for a presumptive ceiling of reasonable delay were necessary (Runciman & Baker, 2017; *R. v. Jordan*, 2016). Thus, the *Supreme Court* established - in 2016 - the presumptive ceiling of 18 months for reasonable delays in provincial and territorial courts, and 30 months in superior courts, respectively (*R. v. Jordan*, 2016). Notably, the *Supreme Court* took suggestions and guidelines from *Askov* and *Morin* but opted - in this decision - to provide strict presumptive ceilings instead (*R. v. Jordan*, 2016).

Following the decision in *R. v. Jordan* (2016) however, court delay remained significant. Notably, 6% of all criminal court proceedings in provincial courts took longer than the presumptive ceiling in 2015/2016 while 15% of proceedings in superior courts exceeded the presumptive

ceiling in the same timeframe (Maxwell, 2018). Cases in both provincial and superior courts that exceeded their respective presumptive ceilings outlined in *Jordan* were more likely to result in a guilty verdict than those that did not exceed them (Maxwell, 2018). In 2017, a Senate Report was released, outlining 13 priority recommendations to the courts in order to reduce delay in criminal proceedings (Runciman & Baker, 2017). One recommendation from that Report outlined that administration of justice offences were using a significant amount of court time, undoubtedly contributing to court delay (Runciman & Baker, 2017). Indeed, Runciman and Baker (2017) argued that of utmost concern are cases in which:

an accused person is back in court for minor matters, such as breach of curfew or arriving late for trial, cases where conditions are unrealistic, such as requiring an alcoholic to abstain from drinking alcohol, and in cases where the conditions imposed do not in fact relate to the original charges (p.6).

Given that many of these conditions are imposed within the context of a decision to release an accused person on bail, it is not difficult to see the link between court delay generally and the bail process as a specific contributing factor. And not surprisingly, the *Supreme Court of Canada* focused its attention on the right to reasonable bail – specifically that of appropriate release conditions - in *R. v. Antic* (2017). In this case, the accused had been denied interim release⁸ due to an inability to provide both a surety and cash deposit as required or necessary release conditions. Section 515(2)(e) of the *Criminal Code* was challenged in this case due to the violation of the right to reasonable bail as well as that of not being denied bail without just cause. This latter constitutional right was reiterated by the *Supreme Court* as a protection against the denial of bail

⁸ Interim release is another term for bail.

for “extraneous” reasons that do not directly serve the functioning of the bail system (*R. v. Antic*, 2017). Additionally, this Court also took the opportunity to reiterate that reasonable bail refers to the conditions of a bail order - specifically that those conditions are not unreasonable. In this case, the *Supreme Court* ordered that bail provisions must be applied fairly and consistently across the country and that the “ladder” principle must be upheld. This latter requirement calls for release as the favourable outcome “at the earliest opportunity with the least onerous grounds” (*R. v. Antic*, 2017). Essentially, the *Supreme Court* emphasized that release should be the norm – and not the exception - for bail outcomes, and that release conditions must be applied in a way that is the least onerous and the most reasonable for the specific case at hand. This is important because despite not speaking directly to court delay in the bail process, it relates to the increasingly prevalent issue of the risk averse mentality seeping into the culture of the bail court which has been directly linked to lengthy case processing.

2.1.3 - Court Delay Meets the Bail Process

In fact, similar problems of court delay are found within the limited context of bail. As already acknowledged, bail cases have been increasing in both length of time and number of appearances to completion over time (Webster, 2009). In Ontario bail courts in 2001, an average of four days was taken to complete the bail process (Department of Justice, 2018). By 2007, bail cases in Ontario were taking an average of almost 6 days to completion (Department of Justice, 2018). This is problematic for a number of reasons. First, provinces/territories are burdened with the non-trivial economic strains of an increasing remand population as those detained for a lengthy bail hearing must spend more time in remand (Webster, 2015). Second, and as this has already been seen, this increase in the number of days to complete the bail process risks constituting an injustice due to its negative impact on fundamental rights (Dandurand, 2014). And third, lengthy

court processing times at the bail stage is a significant contributor to the overall problem of court delay. This is largely due to the ineffective use of active court time, and the increasing recourse to adjournments during this phase of the criminal court process (Myers, 2009). As such, the bail process is one element of the justice system that, due to lengthy processing times, should be the focus of strategies to prevent or at least reduce court delay.

To this end, one must be able to identify the various factors or phases of the bail process which are contributing to lengthy case processing times. In conformity with current legislation, any accused who is detained by police must appear before a Justice of the Peace within 24 hours of their arrest or as quickly as possible without any unreasonable delay (*Criminal Code of Canada* (CCC) s. 503(1)).⁹ Due to this requirement for timely first appearances, one would naturally assume that bail court is in session for an adequate amount of time each day to fulfill this requirement. However, one contributor to lengthy case processing in bail court is the ineffective use of active court time. Myers (2015) found that bail courts across Ontario were only operating - on average - roughly five hours a day (despite being technically open from 9am to 5pm every weekday). Further, only just over half of that time was spent actively addressing matters related to bail (with the other half attributed to “dead time”, which included recesses and other instances in which the court was in session but not being actively used). Excessive and unjustifiable amounts of “dead time” in bail court certainly may be a symptom of inefficiency within the bail process, particularly when they cannot be shown to contribute to a reduction in subsequent appearances or case resolution. This is not to say that there is not enough available court time to resolve cases in

⁹ Note that many accused do not appear in bail court and show cause hearings are not the most common procedural avenue for bail cases. Many accused are released by police immediately after arrest on a “police release”, with or without conditions, on the “promise to appear”. Alternatively, accused can be released on a “consent release”, in which the Crown consents to the release of an accused awaiting trial such that there is no need for a bail hearing to determine it. A judicial officer must approve of the consent release, but this type of release typically occurs instead of a show cause hearing.

a single appearance, but rather, that it is becoming clear through the way in which court time is used that there is an apparent lack of ambition to resolve the hearing in one appearance.

An additional contributor to bail court delay is the high rate of adjournments¹⁰ across most jurisdictions such that decisions are being delayed to subsequent days (Myers, 2015). Across Canada, the rate of adjournments is between 30.7% of cases at its lowest (in Manitoba), and almost 70% of all cases (in Yukon) (Deshman & Myers, 2014). In addition, Myers (2015) found that slightly less than 13% of cases observed in Ontario bail courts were adjourned. However, adjournments in and of themselves are not the problem. Rather, it is unreasonable or unnecessary adjournments that contribute to bail court delay. Indeed, “unjustifiable adjournments and those that are caused by systemic delays in the court system are unconstitutional” (Deshman & Myers, 2014, p. 29). A high rate of unreasonable or unnecessary adjournments indicates increasing delay at bail, as decisions being pushed to subsequent dates means a longer time between the time of charging and time of release or detention of accused awaiting trial.

Additionally, unreasonable adjournments can cause undue hardship to those involved in the proceedings, including the accused, potential victims and victims’ families (amongst others) (Runciman & Baker, 2017). These unnecessary delays require additional court appearances which can constitute further drain on the system and stress to those involved. Delays in the courtroom can also “weaken the connection between the commission of an offence and its ultimate resolution” which threatens the true administration of justice that is intended to “confirm and condemn” criminal actions (Runciman & Baker, 2017, p. 10). Just as importantly, as people’s memories of specific details of events fade over time, the reliability of evidence is also threatened by court

¹⁰ An adjournment is typically understood as the action in which the decision for a case is suspended to another date and time. Defence counsel, Crown prosecutors and the judge overseeing the case can all “request” an adjournment in bail court.

delays (Runciman & Baker, 2017). By extension, this result has the potential to once again threaten *Charter* rights as outlined in section 11(d) that protect the right to a fair trial for those accused of a crime.

An additional problem that arises from unreasonable court delay is the threat of mandatory “stays” (Runciman & Baker, 2017). When a case is “stayed”, it essentially means that the case has been stopped indefinitely due to unreasonable case processing times. Since the decision in *R. v Jordan* (2016) in which presumptive ceilings were introduced to prevent excessive court delay, recourse to mandatory stays has become much more likely. In the case that the Crown cannot adequately justify exceptional circumstances for which a case exceeded the presumptive ceiling, a stay of proceedings will be virtually automatic (Sirota, 2017). This is problematic because it not only interferes with the justice system’s ability to “confirm and condemn” certain actions, but it also means that the victims and/or families of victims do not receive justice in the form of a trial and/or final decision regarding the alleged offender’s guilt (Runciman & Baker, 2017).

Taken together, it is not difficult to see that multiple aspects of the bail process may be contributing to (significant) court delay in Canada. As such, strategies to address lengthy case processing times have been focused on bail, in order to increase the capacity of the courts to hear bail cases in an efficient manner. Within this context, remedial attention has been given to the ineffective use of active court time and an unnecessarily high rate of unjustifiable adjournments emerge as key remedial areas, particularly over the most recent decade. Yet, despite these efforts, the bail process is still described as one in which “less people are being released on bail, less quickly, and with more conditions, during a time of historically low and still-declining crime rates” (John Howard Society of Ontario, 2013, p. 3).

2.2 - RISK AVERSION IN THE COURTROOM

2.2.1 - Risk Aversion and the New Penology

Within the context of persistent court processing delays, risk aversion and risk management have become a potentially significant contributing factor. Over the past several decades, societal norms and priorities have shifted, bringing with them a new way of thinking about criminal justice. The “new penology” is rooted in a postmodern mentality, that “shifts away from a concern with punishing individuals to managing aggregates of dangerous groups” (Feeley & Simon, 1992, p. 449). Today’s society has often been described as postmodern in nature. That is, as modernization continues to grow and evolve at an unprecedented rate, so do the potential threats to safety and security, of which some were previously unknown (Beck, 1992). Feeley and Simon (1992) describe the new penology as a new role of the justice system that can be described by three main transformations. First, we have witnessed “the emergence of new discourses. In particular, the language of probability and risk increasingly replaces earlier discourses of clinical diagnosis and retributive judgement” (Feeley & Simon, 1992, p. 450). Second, there are new objectives that focus on “the efficient control of internal system processes in place of the traditional objectives of rehabilitation and crime control” (Feeley & Simon, 1992, p. 450). And third, we have seen new techniques that “target offenders as an aggregate in place of traditional techniques for individualizing or creating equity” (Feeley & Simon, 1992, p. 450).

“Risk” is the perception of “hazards and insecurities induced and introduced by modernization itself” (Beck, 1992, p. 21). Managing risk then becomes a process of identifying those hazards and insecurities and engaging in certain actions in order to prevent or reduce risk to oneself. Today’s society has become obsessed with risk, as “the threat of crime has become a

routine part of modern consciousness, an everyday risk to be assessed and managed” (Garland, 1996, p. 446). As such risk aversion is the tendency of an individual, or in this case, the courts (if not society as a whole), to make decisions based on limiting the potential risks of crime.

This mentality of risk aversion is portrayed in two main ways in the courtroom, especially within the bail process. First, it is visible through the actual calculation of the degree of risk posed by the accused in the bail process when deciding whether to release or detain. Second, it is expressed through the degree to which the judge is held responsible for the risk to the community posed by an accused who is ultimately released on bail. However, prior to a detailed discussion of these two facets of risk aversion in the courtroom, it is necessary to first outline the origins of the current risk averse society and how it has become a primary facet of the justice system in Canada. Indeed, the growth of a neoliberal mentality has led to the obsession with managing one’s own risk related to harm or danger (Feeley & Simon, 1992). More pointedly, one of the major threats to law-abiding citizens resides in the “criminal” offender, even when they have not yet been found guilty (Webster, 2015). Thus, the focus in the justice system has become that of preventing or avoiding – for as long as possible - the release of the accused who *might* commit a crime if released on bail (Doob & Webster, 2012; Webster, 2015).

While the primary purpose of bail court as a system is to measure and make decisions based on risk, actuarial risk assessments are not employed in bail court like they are in other criminal justice environments (Myers, 2009). Rather, risk considerations on bail are calculated using entirely subjective judgments made about the accused and their circumstances (Myers, 2009). In other words, the “riskiness” of the accused is not quantified in bail court, but rather, it is perceived (Myers, 2009). The presumptive “default” position – being that of the release of the accused unless there are reasons to the contrary - has changed in practice (Webster, Doob & Myers, 2009). Indeed,

detention is seemingly the default position now, as judges appear to prefer remanding an individual to custody – even temporarily before a more formal bail decision is made - when there is even a small risk to the public, rather than run the risk of (immediate) release despite a low probability of the accused committing an offence (Webster, Doob & Myers, 2009).

By law, judges are obligated to consider three different forms of risk within the context of bail hearings, known as the grounds for detention. There are two main reasons or “grounds” pertaining to why an accused is denied bail: first, when they represent a possible “flight risk” (primary grounds) and second, when they are a risk to public safety (secondary grounds) (Kellough & Wortley, 2002). The third ground is rooted in maintaining public confidence in the justice system. This latter ground is less likely to be used as a *sole* reason for detention due to issues rooted in the accused’s right to liberty (amongst other rights) (Rogin, 2017). That is, it is not often justifiable to detain a legally innocent individual, effectively restricting all liberties of the individual prior to a finding of guilt, simply in order to maintain public confidence in the courts.

Importantly, this risk calculation may contribute to unnecessary adjournments where the judicial officer simply does not want to take responsibility for any potential offending in the case that they release the accused (Doob & Webster, 2012). Put simply, the judicial officer adjourns the decision to another day (and to another judicial officer) in order to avoid having to make the decision themselves. Indeed, the decision is simply passed on to someone else. Unnecessary adjournments of this nature can lead to lengthy case processing times because an adjournment necessitates additional appearances and additional days of court time to come to a decision.

As previously stated, the primary grounds apply to accused who are at risk of not appearing for their trial in the case that they are released on bail (Kellough & Wortley, 2002; Williams, 2016). Like any risk analysis, there are factors that make a person more or less likely to be a flight risk.

For instance, having permanent employment and a permanent home address makes an accused less of a flight risk (Kellough & Wortley, 2002). Thus, such factors can increase the likelihood that an accused will obtain bail if they are not considered a risk to public safety. Risk to the public is measured against a list of variables that include, but are not limited to, the number of charges and presence of a criminal record (Kellough & Wortley, 2002). A greater number of charges could result in the accused being deemed a higher risk to the public and, by extension, being remanded to custody before trial. This outcome will almost certainly affect their trial and sentencing outcomes, as well as contribute to the remand population.

The secondary grounds for detention reflects the obsession that society has with risk management and the “risk aversion mentality”, where the potential riskiness of an accused is used to keep them separated from the rest of society (Mitchell, 2015). Essentially, the act of denying bail to certain accused, based on the prioritization of their level of risk as assessed by the Court, seemingly deems the accused guilty until proven innocent. Some might argue that this starting point is inconsistent with *Charter* rights regarding the presumption of innocence (Doob & Webster, 2012; Webster, 2009), and ultimately leads to greater reliance on incarceration. Equally notable, the seriousness of charges that is considered in the risk assessment in bail hearings can contribute to lengthy case processing times in bail court as the court may require additional appearances to assess the extent or degree of the risk as well as potential ways of reducing it (e.g., through the use of bail conditions). Doob, Sprott and Webster (2017) found that just over 10% of all bail cases in 2014/2015 in Ontario required 5 to 7 bail appearances before completing this phase of the criminal process. They also found that longer stays in remand (91 days or more) were associated with many of the most serious offences such as violence, weapons charges and offences involving children (Doob, Sprott & Webster, 2017). Perhaps not surprisingly, there appears to be

an interaction between the seriousness of the offence(s) and the number of bail appearances required before a decision is made. The result, of course, is lengthy processing times and longer time spent in remand.

Just as importantly, there is more than one type of risk being considered during the bail process. This is different than the calculation of risk in terms of the grounds for detention in bail hearings as outlined in law and as defined above. Rather, this next discussion refers to a different calculation of risk in terms of those types present and being considered culturally within the courtroom by the judicial officer. While the calculation of “primary” risk plays a significant role in determining the likelihood of the release or detention of an accused, concerns about “risk” also permeate the culture of bail courts under the umbrella of “secondary” risk. Specifically, primary risk refers to the risk that accused persons released on bail pose to the safety and security of the community. In contrast, secondary risk is the risk to “the reputation of the criminal justice system if an accused offends while on bail” (Myers, 2009, p. 128). Secondary risk is seemingly becoming a significant consideration of court actors, as they are continuously asked to “weigh rights and risks” at bail (Berger & Stribopoulos, 2017, p. 305). Specifically, when a release order “goes bad” (that is, when the accused breaches a condition or commits a subsequent substantive offence), the responsibility (or blame) falls on them, unless it can be offloaded onto others (often by delaying a decision to another day and to another judicial officer) (Myers, 2009). These dual concerns surrounding risk and responsibility result in conservative decision making on behalf of the judicial officer, which can subsequently result in either (or both) the transfer of decision making to someone else entirely or a significant number of adjournments in an attempt to find multiple ways to reduce this risk (Allan et al., 2005; Berger & Stribopoulos, 2017; Myers, 2009; Webster, 2015).

Unsurprisingly, conservative decision making rooted in risk aversion within the court can easily result in additional time and number of appearances needed to arrive at a decision. One need only think about Garland's (1996) theory of responsibilization, in which responsibility for risks and threats to public safety is shifted from state actors and organizations onto the community itself. Indeed, the responsibilization of the public becomes a "core project" for the increasingly risk averse society (Kemshall & Maguire, 2006, p. 325). As such, individual citizens are employed with the task of "continual patrolling of social boundaries to determine which kinds of people are deemed competent to participate in this kind of society and which are not" (Kemshall & Maguire, 2006, p. 325). This phenomenon is illustrated in the significant dependence upon sureties in the bail process, as literature supports the argument that while there are no mandatory conditions for bail release orders written in the law, sureties are being required for the vast majority of release orders (Doob & Webster, 2012; Myers, 2009). A surety is an individual that the court has deemed to be an acceptable person to supervise the accused while on bail and ensure that the accused will not (re-)offend and will abide by their release conditions. A surety must be willing and able to pay the court a certain amount of money (surety bond)¹¹ should the accused breach their conditions or commit another crime (Myers, 2009).

The intent behind sureties is that accused might be more willing to abide by their release conditions since their surety, typically someone close to them, is responsible for paying a potentially large sum of money if they breach (Doob & Webster, 2012). However, the problems associated with an increase in the use of sureties for bail are twofold. On the one hand, sureties are increasingly acting in a "quasi-police" role. On the other hand, the obligatory monetary element

¹¹ A surety bond is the sum of money that the surety agrees to pay if the accused breaches their release conditions. This amount is determined during the bail hearing. Sometimes this bond is paid up front, before the accused is released (and returned later if the accused does not breach), and sometimes it is not.

of a surety requirement – whether with or without an up-front deposit - undoubtedly privileges those who can afford it (Myers, 2009). Both of these problems related to sureties can contribute to lengthy case processing time in bail court.

The increase in the use of sureties for almost every bail release illustrates how court actors are “offloading” their responsibility onto a citizen who would instead be blamed if an accused were to re-offend while on bail (Myers, 2009; Schumann, 2018). Thus, sureties act as an “insurance policy” or “quasi-police” for the court on issues of bail, as they both minimize the risk of the accused (re)offending, while at the same time providing the court with some level of protection from blame if the accused does reoffend (Myers, 2009). This is problematic because society becomes responsible for the potential offending of an accused released on bail, which allows the justice system to offload its own responsibility for those it releases onto the community (Friedland, 1965). Further, it constitutes yet another source of delay in the bail process. As more accused require sureties, and sureties require extra time to identify, interview, testify and be approved as sureties, additional days are needed.

An increase in the use of sureties in bail court also has the potential to cause further disadvantage to accused whose sureties cannot contribute the surety bond. While the written law states that the monetary element of a bail release should be set in relation to what is within the surety’s means, it seems - in practice - that the financial circumstances of the potential surety is a primary concern for the court when deciding their suitability (Myers, 2009). This is problematic because it means that in some cases in which a surety is required, the release of an accused awaiting trial could potentially become entirely dependent upon the financial means of a surety (Rogin, 2017). This can contribute to bail court delay, as the defence may encounter challenges obtaining

a surety that can afford a bond, translating into the need for additional adjournments and court appearances in order to locate and confirm a financially secure surety.

Even when accused are released, risk aversion still plays a role as justices will often apply many onerous conditions. A release order with multiple conditions is implicitly assumed among judicial officers to be much better received by the public than an accused released without such conditions. The assumption – it would seem - is that the greater the number of restrictions, the less possibility or opportunity there is to commit an offence (Friedland, 2012). While a greater number of strict conditions such as weapons and location restrictions are understandable for violent offences, Sprott and Myers (2011) found that these same restrictions were being placed on accused persons with charges for minor offences (frequently defined as non-violent in nature (e.g., theft under \$5000)). The application of many onerous conditions is not only in contravention of the ladder principle outlined by the *Supreme Court*, but also contributes to bail court delay. Indeed, the judicial officer must take the time to announce and explain every condition to the accused, and each condition is subject to discussion with the Crown and/or defence, further contributing to the overall length of the bail hearing.

In sum, the obsession with risk aversion in bail court is uncontroversial. More importantly for this study's current purposes though, is its consequences or implications for court delay in determining whether an accused will be released or detained until trial. Risk plays a central role in the decision making of judicial authorities in ways which are directly (and indirectly) related to lengthy case processing at bail. Conservative decision-making of judicial officers increases bail court delay by using unnecessary adjournments to transfer the decision to someone else. The requirement of sureties as a release condition contribute to lengthy case processing time at bail because they must be approved as part of the hearing and it can take time – and multiple

appearances – to find a financially able one. The application of many onerous bail conditions contributes to bail court delay as all conditions are subject to a period of explanation and questioning within the hearing, adding even greater time to the overall hearing length.

2.2.2 - Court Culture and Delay in Decision-Making

While discussing court processing delays and the factors that seemingly contribute to this problem, the culture within the court (which has allowed this problem to persist) is of equal importance. Some have reported that the courts are increasingly focused on prioritizing efficiency in dealing with the daily docket over the proper administration of justice (Myers, 2015; Webster, Doob, & Myers, 2009). In turn, this practice normalizes a “culture of complacency” (Runciman & Baker, 2017). Due to the prioritization of quickly resolving the court docket rather than actual bail cases, the court system in Canada has evolved into a “culture of adjournments”, rather than an adversarial system (Myers, 2015). Within this “cultural” context, numerous and unnecessary adjournments are not only a sign of an obsession with risk aversion (as argued above), but also a sign of a court culture of inefficiency. This characterization has been significantly scrutinized within the context of proposed bail reform (Dandurand, 2014; Webster, 2015). In particular, Dandurand (2014) argues that unnecessary adjournments stem from ineffective hearings in which the court actors involved are unprepared for the hearing and, as such, require an adjournment in order to be better prepared. Even the *Supreme Court* weighed in within this context. In *R. v. Jordan* (2016), the Court stated that in today’s court culture, “unnecessary procedures and adjournments, inefficient practices, and inadequate institutional resources are accepted as the norm and give rise to ever-increasing delay” (par. 40). Thus, multiple adjournments can also indicate a court culture that is lacking in institutional efficiency, which further contributes to delays in case processing time.

Court culture is further impacted by the people involved in the court process and their responsibilities in the courtroom, which can also contribute to a culture of inefficiency and thus, increased court delay. Indeed, judges, prosecutors, and defence attorneys have different roles, thus different mandates, motivations, and objectives, but are expected to work together for one common goal: the administration of justice (Myers, 2015; Webster, Doob & Myers, 2009). The many competing objectives in the courtroom, perpetuated by the different roles of the principal court actors, increase the likelihood of inefficiency as one can easily lose sight of the broader goal of ensuring the smooth operation of the court; even judges (Myers, 2015). Further, these roles which are all competing with one another as well as blurring together, create a “culture of numerous conditions and restrictive releases” at bail (Yule & Schumann, 2019, p. 45). Yule & Schumann (2019) found that in a courtroom with judicial officers as adversarial “referees”, they agreed with Crown requests for all condition types, over 90% of the time. This finding suggests that while judicial officers are meant to be a safeguard against unreasonably onerous release conditions, they may not necessarily be fulfilling this role (as independent decision-makers).

Further, Webster (2009) found that in video remand court, while there were – on an average day – 36 cases processed, this specific court was only in session for about an hour and a half per day. Indeed, 82% of the cases in video remand court were adjourned to another day (Webster, 2009). While on the surface, this seems to indicate an efficient court, at least in terms of video remand cases, processing a high number of cases in a short period of time does not necessarily equate to their *resolution*. In fact, this illustrates the greater underlying court culture of adjournment, where cases are repeatedly adjourned to the next day in order to clear the daily docket as soon as possible.

2.2.3 – Downstream Effects: The Impacts of Bail Court Delay

Further to the persistent issue of lengthy case processing time in bail court are the negative impacts that delays in bail court have on accused still in the bail process. The further consequences of court delay on accused in remand are as follows: the living conditions on remand are unpleasant, to say the least; there is no compensation for the accused's time in remand if they are found not guilty or they are given a non-custodial sentence; there is increased potential for wrongful convictions given the pressure for accused to plead guilty even when innocent; and, bail court delay disproportionately impacts marginalized and/or vulnerable populations.

First, lengthy case processing times in bail cases necessitate lengthy time spent in remand, awaiting a bail decision. Unfortunately, the living conditions in remand are typically quite poor, leaving an accused vulnerable to additional suffering. In a study of remand prisoners from four Ontario provincial prisons, with specific focus on those still in the bail process, Pelvin (2019) studied the impacts of remand conditions on them. Pelvin (2019) explained that in the process of going to and returning from bail court, accused on remand reported “some of the most visceral experiences of humiliation, degradation, and pain” (p. 75). Not only that, but the food given both in remand custody and while being transported between prison and bail court consisted of very small portions – sometimes just a granola bar – spread out over long periods of the day (Pelvin, 2019). Sometimes, accused on remand returning from bail court would miss dinner, and would have to go to bed hungry (Pelvin, 2019). More broadly, lengthy stays in remand have potentially negative impacts on an accused's ability to mount a case in their defence, as the ability to make phone calls is often undermined by the infrastructure of the institution, making it difficult to call for bail arrangements (Pelvin, 2019). Additionally, due to overcrowding, some accused would be “double-bunked” such that one had a bed and the other had to sleep on the floor (Pelvin, 2019).

Exacerbating the conditions of remand was the mere 20 minutes of yard time that accused received per day (Pelvin, 2019). Undoubtedly, the conditions of remand are deplorable. This reality is only exacerbated for those accused who have a lengthy bail process and must remain in remand for even longer periods.

A second negative consequence of bail court delay is the fact that accused do not receive any compensation for their time on remand if they are found not guilty at trial or are given a non-custodial sentence. While some time spent in remand, factually innocent or not, is an inevitable aspect of the justice system due to the legal obligation to hold a bail hearing, excessive time spent on remand due to unreasonable court delay is problematic. Excessive pre-trial incarceration is a term that has been used to describe the situation in which an accused spends more time in remand awaiting trial than they would serving a custodial sentence upon conviction (Sherrin, 2012). Lengthy case processing time in bail court almost certainly increases the potential for excessive pre-trial incarceration for those found not guilty or not handed down a term of imprisonment. In this case, accused have been exposed to the poor remand conditions, and do not receive any compensation for their suffering. This serves only to exacerbate the negative consequences of bail court delay on the accused.

Third, bail court delay potentially contributes to the increased likelihood of wrongful convictions. Unfortunately, where risk aversion in the criminal justice system balances the risk of a wrongful conviction against the risk of a crime being committed on bail, (Berger & Stribopoulos, 2017) the former is still occurring. Illustratively, Kellough and Wortley (2002) found that almost 81% of individuals who were detained at bail would plead guilty, while only 55% of those released would plead guilty. Unfortunately for many accused, the costs (both monetary and otherwise) of the court process are not worth the “pains” of due process such that many plead guilty (Feeley,

1979). Essentially, the accused could receive more time in jail for choosing to plead not guilty and exercise his or her right to trial, than if they were to falsely plead guilty. As such, the pressure to plead guilty in order to limit time spent in remand custody – with its deplorable conditions and immense personal costs – is further exacerbated by lengthy case processing time in bail (Webster, 2022). Said more succinctly, the immense cost of maintaining one's innocence through excessive bail court delay increases the likelihood of wrongful convictions and results in an additional negative consequence of continued court delay at the bail stage.

Lastly, delays in bail processing which necessarily cause longer stays in remand have the negative consequence of disproportionately impacting vulnerable populations and racialized groups. Unsurprisingly, Indigenous people often suffer from the impacts of bail court delay more so than their non-Indigenous counterparts. Due to the increasing reliance on sureties at bail, Indigenous people are put at greater disadvantage due to the fact that Indigenous accused are often already experiencing marginalization before bail court. Indeed, they are often “unemployed, have minimal income, homeless or otherwise socially isolated” (Rogin, 2017, p. 344). These factors make finding a suitable surety extremely difficult, as their relative social isolation potentially keeps them from having reasonably affluent people - with the means to be sureties - in their social circle (Rogin, 2017). This can contribute to even further bail court delay (as compared with non-Indigenous accused) because the defence may need many days to attempt to find a suitable surety for the accused. This challenge is further exacerbated for Indigenous accused who are arrested on a reserve that is often in a remote area. Indigenous accused arrested on a reserve would have to be transported to the nearest provincial institution whereby the surety – if a suitable one can even be found – would have to travel to that institution for every bail appearance (Rogin, 2017). This further contributes to lengthy case processing times for Indigenous accused in the bail process as

scheduling the hearing around availability of a surety who must travel a great distance can take many days. These delays ultimately result in even greater time spent in remand custody as compared with non-Indigenous accused, resulting in disproportionate suffering and marginalization of Indigenous accused rooted in the deplorable conditions of remand.

2.3 - SHOW CAUSE HEARINGS: THE DEVELOPMENT OF THE “MINI-TRIAL”

Clearly, delay in the determination of bail finds itself a prominent feature of the Canadian bail system. This is complicated by a risk-averse mentality and a court culture that encourages adjournments, which has been adopted within the context of a postmodern society. However, very few scholars have examined what the actual show cause hearing itself looks like in order to develop an even deeper understanding of how bail hearings are contributing to delay. While show cause hearings are not a frequent event in the processing of bail cases, it is the pinnacle of the bail process. It has been suggested that it is at this point that all of the factors related to the bail hearing come to fruition - all legal counsel is present, the accused is present, sureties are present, witnesses are present, etc. (Wyant, 2016). More importantly for this study's current purposes, there is some anecdotal evidence that suggests show cause hearings are taking multiple appearances and a significant amount of time to resolve, making them a potential contributor to court delay within the bail process. Yet, show cause hearings have received almost no scholarly attention or systematic study.

In terms of circumstantial evidence, the “show cause” hearing has itself been described as having become a “mini trial” (Wyant, 2016, p. 34). Wyant (2016) argues that the inclusion and implicit requirement that sureties be not only selected, but also present for the bail hearing, have contributed to this problematic development of the show cause hearing. Even the scheduling of

the show cause hearing can complicate the process and result in an unnecessary adjournment. The task of ensuring that the accused, surety, and counsel are available on the same day is an onerous one. Compounded with the issue of a busy court schedule, Wyant (2016) suggests that counsel may also be unprepared because they select a day in favour of availability rather than readiness. If counsel is unprepared, there is a greater likelihood of an adjournment (Wyant, 2016). Unsurprisingly, these factors can result in additional delay seeping into the bail process.

The use of sureties (as an increasingly common characteristic of show cause hearings) can also potentially contribute to the length of bail hearings given that their testimony is often necessary. In the past, sureties were used in a small number of bail proceedings, in which their purpose was to satisfy the primary ground of release: that the accused appear back in court as requested (Wyant, 2016). With the increasing focus of the justice system on the secondary grounds of protecting the risk to the public, Wyant (2016) argues that sureties are frequently now used as “jailers in the community”, to ensure that the accused abides by their release conditions and thereby does not re-offend while on bail. This transformation in the increased reliance on sureties at bail is another instance of shifting the responsibility of risk to others, whereby the justice agrees to release the accused, but the responsibility for reoffending does not fall on them. Wyant (2016) further argues that not only is it inappropriate to charge sureties with such a responsibility (that should, in fact, fall to the justice system), but sureties also do not need to attend the hearing and give their testimony at that time. As such, sureties should be able to appear before a justice at a court office and sign the release order once deemed fit (Wyant, 2016). This should occur separate to the bail hearing, in order to prevent further delays in the show cause hearing (Wyant, 2016).

Another consequence of the “mini trial” bail hearing is argued to be rooted in the calling and verification of evidence within the time limits of the bail hearing (Wyant, 2016). The original

purpose of the show cause hearing was to hear the facts of the case and the accused, and subsequently decide whether the individual should be released or detained prior to their next court proceeding, with release being the rule and detention being the exception (McLellan, 2009). As the *Criminal Code* does not require evidence to be called as it is not, in fact, a trial, it is proposed that the inclusion of such information in the bail hearing has no legal basis (Wyant, 2016). Indeed, Wyant (2016) argues that the practice of including evidence in the bail hearing should be eliminated, and such hearings should return to oral arguments from both the Crown and the defence, followed by the decision made by the judicial officer. The new priority of risk management in the justice system and society more broadly has seemingly transformed the actual decision-making process being made at show cause hearings.

Similar to the argument eliminating the presentation of evidence at a bail hearing is that of the use of witnesses at bail hearings. Wyant (2016) argues that the calling of witnesses to testify in a bail hearing can “both delay and lengthen” a bail hearing unnecessarily (p. 32). In addition to the issue of finding available times for sureties to be present, a hearing also needs to be scheduled around the availability of the witnesses, as well as the availability of the court to hear potentially lengthy testimonies. These factors have the potential to cause additional delays in scheduling the hearing, and lengthy questioning of witnesses can contribute to the overall length of the hearing (Wyant, 2016). Consequently, Wyant (2016) argues that the testimonies of witnesses should not be required in bail hearings, other than in exceptional circumstances.

In brief, there appears to be some anecdotal evidence to suggest that show cause hearings themselves may be yet another factor contributing the lengthy case processing in bail court. The notion that the show cause hearing has become a “mini-trial” certainly can be interpreted as circumstantial evidence. Yet, it is also notable that the arguments in favour of this proposition have

been presented largely by a single individual and based largely on a single courthouse. Just as relevant, they are based largely on court observations that were not conducted in any systemic way. As such, a more methodologically sound research project would constitute a valuable extension of these initial observations. This study proposes to (at least partially) fill this gap.

3 - METHODOLOGY

3.1 - RESEARCH DESIGN AND OBJECTIVE

A methodological approach that mixes both quantitative and qualitative research strategies has the virtue of being able to effectively apply aspects of both schools of methodology. A primary advantage to such an approach is that it yields fixed, concrete results with the necessary context to understand the material and satisfy a complex research objective (Creswell & Creswell, 2017) more fully. This thesis employs a mixed-methods approach in order to construct a picture of show cause hearings in Ontario. To this end, it examines two inter-related elements: 1) a number of factors that lead a case to a show cause hearing; and 2) the process and outcomes of this type of hearing in one Ontario bail court. Indeed, the bail process is a significant contributor to the growing issue of court delay in Canada. Specifically, unreasonably lengthy case processing time in the bail process is leading to delay in resolving issues of bail, leading to longer stays in remand.

Show cause hearings are one potential aspect of bail that may be contributing to lengthy case processing times and number of appearances. In examining this hypothesis, this research is exploratory in nature. Specifically, the principal objective is to discover and outline a number of factors that may be contributing to lengthy show cause hearings which are potentially contributing to the significant problem of court delay in Canada.

3.2 - RESEARCH SETTING

The research setting for this study is bail court in Ontario, specifically in the Nation's Capital of Ottawa. While Canada as a whole has been struggling with the increasing remand population, Ontario has experienced what one might aptly describe as a bail crisis. That is, the number of people on remand in Ontario accounts for over 70% of adults in provincial custody (Malakieh, 2020). This proportion is greater than that found in any of the other provinces and territories, making Ontario the region with the greatest remand population in the country.¹²

As the remand population consists of both accused who are awaiting their bail hearing and accused who have been detained following a bail hearing and awaiting trial, it is important to make the distinction clear. In 2008, almost 66% of the remand population consisted of accused spending between 1 and 7 days in remand (Webster, 2015). As accused must have a bail hearing as soon as possible after being detained by police, this proportion of “short-term” stays are seemingly consistent with those who are waiting for their bail hearing to be concluded. Thus, the majority of the remand population in Ontario is almost certainly made up of those still in the bail process.

Further, it was found that in Ontario in 2011, bail hearings accounted for 46% of all cases in the province (Department of Justice, 2018). That is, a significant proportion of cases in Ontario are holding a bail hearing (rather than, for example, simply consenting to detention). By 2018, bail cases in Ontario took – on average - 4 days and 2 appearances in order to finalize the outcome (Department of Justice, 2018). Thus, bail cases in Ontario are seemingly taking a significant number of appearances and time to reach the resolution of this phase of the criminal court process.

¹² Nova Scotia (71%), Alberta (71%), Yukon (70%), Manitoba (68%), British Columbia (67%), Nunavut (56%), the Northwest Territories (54%), New Brunswick (53%), Saskatchewan (51%), Newfoundland and Labrador (46%), Quebec (45%), Prince Edward Island (29%) (Malakieh, 2020).

Ottawa was chosen specifically for this research for two reasons. On the one hand, it was easily accessible. On the other hand, previous research has indicated a significant problem of delay in the form of multiple appearances in Ottawa's bail courts. Webster (2009) found that in the Ottawa court, multiple appearances were taken to complete the bail process, which is consistent with what Ontario, as a whole, has been experiencing. Historically, bail hearings were meant to be short procedural events aimed at determining whether an accused should be detained or released prior to trial, with a specific focus on the primary grounds (whether they will appear in court). Within this context, bail hearings are typically scheduled and expected to be resolved in under 1.5 hours (Wyant, 2016). However, when show cause hearings exceed the limits of a "short" event, they very likely contribute to the overall problem of court delay. This study intends to examine whether this timeframe is generally respected and if not, why.

3.3 - POPULATION AND SAMPLING

The population under study is all cases in which a show cause hearing was held in any Ontario Bail Court. For the purpose of this research, a "case" is defined as all charges facing an individual on a single information. In the event that one individual has more than one information, both can be joined to be heard in the same bail hearing in what is known as a "section 524" case.¹³

¹³ Section 524(1)(a) of the *Criminal Code* states as follows:

When an accused is taken before a justice in any of the circumstances described in subsection (2), the justice shall **(a)** if the accused was released from custody under an order made under subsection 522(3) by a judge of the superior court of criminal jurisdiction of any province, order that the accused be taken before a judge of that court so that the judge may hear the matter; or **(b)** in any other case, hear the matter.

The circumstances for such are that:

(a) the accused has been arrested for the contravention of or having been about to contravene, a summons, appearance notice, undertaking or release order and the prosecutor seeks to have it cancelled under this section; or **(b)** the accused has been arrested for having committed an indictable offence while being subject to a summons, appearance notice, undertaking or release order and the prosecutor seeks to have it cancelled under this section.

The sample under study was drawn from the Ottawa Courthouse and is comprised of all such cases that were processed in the Ottawa Bail Court during the months of March and April of 2017 and again in 2018. These specific parameters reflect the fact that these data were collected as a part of a larger study on the processing of bail hearings in the Ottawa Bail Courts with a particular focus on the impact of the change in presiding officer (ie., judge vs justice of the peace) between 2017 and 2018. This wider study included the collection of data for all types of bail hearings held in the Ottawa Bail Courts, including the 25 show cause hearings that constitute the focus of the current study. In addition to data on show cause hearings, there was also information collected on video remand hearings (which allow for video hearings in bail court to be conducted without transporting the accused to a courtroom), and “polycom” hearings (which also allow for bail hearings to be conducted without the presence of an accused in the courtroom, but, in this case, by phone conferencing with out-of-custody accused persons).

In contrast, a show cause hearing is a bail hearing in which the prosecution typically must “show cause” to the judicial officer as to why the accused should not be granted bail awaiting trial.¹⁴ For this wider study, in 2017, the research assistant collecting the data attended 173 video remand cases, 154 “polycom” hearings, and 14 show cause hearings. In 2018, the research assistant attended 122 video remand cases, 126 “polycom” hearings and 11 show cause hearings, respectively. During this collection, detailed notes were recorded of each hearing, which included important descriptive variables such as gender, race, presence of criminal record, length of the hearing, number of witnesses and more. For the purposes of this study, only those cases in which

¹⁴ While more rare, a “reverse onus” show cause hearing is one in which the defence must show cause as to why the accused should be granted bail awaiting trial.

a show cause hearing took place are of interest. To that end, all cases from this wider study that held a show cause hearing were included in this study, totalling 25 cases.

These 25 cases reflect the 14 show cause hearings observed in 2017, and the 11 in 2018, respectively. In 2017, there were three active bail courtrooms (operating simultaneously) while in 2018, there were two active courtrooms (again, operating simultaneously).¹⁵ The research assistant attended court on different days of each week in order to obtain a relatively random sample of cases in all bail courts. On each day, the researcher selected the courtroom in which they would observe by using a random number generator. In 2017, they would use the random number generator the first day (to choose between the 3 courtrooms), and again the second day (to choose between the remaining 2 courtrooms), and then would go to the last courtroom on the third day. In 2018, they would use the random number generator for the first day, then go to the other courtroom the next day. This process was continued for the remainder of the collection period. It is important to note that if a hearing continued beyond the initial day, the primary researcher attended the subsequent day(s) of the hearing in whichever courtroom it was held, in order to ensure the most complete information was collected for that particular case.

3.4 - DATA COLLECTION

To conduct the data collection phase of the research project, the research assistant attending the show cause hearings took detailed notes of everything that occurred within the context of each hearing as determined by an outline that had been constructed prior to data collection. Since primary data collection was completed prior to the use of the data for this specific study, the

¹⁵ In 2017, there was a courtroom dedicated to each type of bail hearing (i.e. show cause; polycom and first appearances; and video remand). In 2018, the courtroom dedicated to video remand was eliminated and moved into the same courtroom as polycom hearings.

collection phase (for current purposes) consisted of taking these raw data and coding them in order to be able to subsequently analyse them using a (quantitative) statistical package.

To this end, a preliminary coding guide was drafted first. This task was completed by systematically reviewing all of the field notes collected by the research assistant while observing each case and subsequently identifying the relevant theoretical constructs of interest that would be used for analytic purposes. These constructs of interest were divided into three categories: general case data, show cause data, and release data. Upon identifying these categories of interest, all relevant variables were created to capture each construct.

General case data captured general information describing the case. They include variables such as the number of charges and presence of a criminal record, as well as total length of the hearing (in hours/minutes) and the outcome of the hearing. Show cause data captured the specifics of the actual hearing which were unique to each case. For example, these variables include those related to the referred grounds of the case, the number of witnesses, the onus, the number and types of breaks, and the length of time each party (defence, prosecutor, witness, judicial officer) took to speak during the hearing. Finally, release data captured the specifics of the release order in the case that one was granted. They include variables on the release type, the number of release conditions, and the specific conditions attached. Within each variable, relevant response categories were created accordingly. In this phase, it was ultimately decided whether the response categories were quantitative or qualitative, and in the former, if they were describing a continuous or dichotomous variable. See Table 3.4.1 below for an example of a portion of the preliminary coding guide:¹⁶

¹⁶ See Appendix C for the full variable list and coding guide.

Table 3.4.1: Coding Guide Example

Variable	Response Category
Total Length of Hearing	In minutes
# Current Charges	i.e., 1, 2, 3, 4, etc.; 999 = Unknown
Domestic Violence	0 = No; 1 = Yes; 888 = N/A (non-violent); 999 = Unknown
Charge Type	1 = Violent Offence; 2 = Property Offence; 3 = Administration of Justice Offence; 4 = Firearms Offence; 5 = Drugs/CDSA Offence; 6 = Other; 999 = Unknown. (Code for most serious current charge).

The creation of a coding guide was a complex process, in which a pilot study was conducted to assist in its development. This phase was conducted for the purpose of verifying the accuracy of the preliminary coding guide. For the pilot study, 4 cases were randomly chosen from the total (25) in order to conduct a preliminary test of the coding guide. The pilot study was helpful in identifying problematic areas and making decisions about the coding process prior to applying it to all 25 cases. Following the selection of the 4 cases, a systematic review of each one was conducted using the preliminary coding guide. For example, in the preliminary test, it became clear that time-related variables such as “hearing start time” were not adequately described by a regular 24-hour clock, as some cases were not concluded in the same day and subsequently continued the next day. Therefore, a 72-hour clock was imposed for all time-related variables. Further, the pilot study allowed for the addition of many other valuable variables that were not included in the preliminary coding guide. Finally, the pilot study called attention to an important substantive difference between “unknown” and “not applicable” cases as relevant response categories. As

such, the former was coded as 999 and the latter as 888 – an addition that was essential for context and clarification. Illustratively, this change in coding was necessary in the situation in which no surety was required in a specific case. As such, the code for whether there was a surety interview is not “unknown”, it is “not applicable”.

The final phase of collection involved the application of this preliminary coding guide and results of the pilot study to all 25 cases in the study, in order to create a final coding guide. This step was conducted to ensure that no other relevant theoretical considerations or variables emerged within the other cases that should have been included overall. Following this extensive process, a total of 174 variables emerged as relevant to the study - 22 of which were qualitative and 152 of which were quantitative in nature. During this coding task, a methods journal was kept in order to track all methodological decisions relative to the coding and analysis phases. From this portion of the methodology, a formal coding guide emerged, which outlined every variable included in the study as well as the associated values (see Appendix C for the coding guide).

3.4.1 - Dependent and Independent Variables

Given that the purpose of this research is to understand the process and outcomes of show cause hearings in the Ottawa Bail Court, the principal dependent variables are Total Length of the Hearing, and Final Decision of the Hearing (i.e., whether the accused was ultimately released on bail or detained awaiting trial). Final Decision is considered to be a dichotomous variable, coded as either “release” or “detain”, while Total Length of Hearing is a continuous variable, represented in minutes. It is important to note that while Final Decision does not have a third value typically relevant to bail hearings - “adjourn” – precisely because there were no adjournments noted as the *final* decision in this study, adjournments still occurred in several of the cases. Indeed, there were

those in the study which were adjourned to the next day for a decision. In this situation, a final decision was made on that subsequent day which was recorded by the research assistant.

Total Length of Hearing is a central dependent variable in the context of court delay and processing. For cases which extend beyond one day, this variable reflects the prevalence of adjournments within this sample, which is a potentially significant contributor to bail court delay. Related to the issue of court delay is also that of the final decision in a bail hearing. As one might recall, accused who have been detained as a result of delays in the bail process potentially face substantial time in pre-trial incarceration, which has lasting negative impacts on the accused. The independent variables chosen for this study were an extensive combination of characteristics of the accused, criminal justice factors, and risk assessment factors. These factors were supplemented with extensive qualitative data collected from the notes relative to the hearings where appropriate. Characteristics of the accused were collected primarily at the beginning of the hearing and included factors such as relative age (adult or youth), gender, and prior criminal record. Criminal justice factors included any referenced grounds for detention, the onus of the case, and the type of judicial officer presiding (i.e., judge or justice of the peace). Risk assessment factors were, for example, number of current charges, the most serious charge in the case, and the presence of administration of justice charges.

3.5 - ANALYSIS

The analysis of the quantitative data was conducted using statistical software (SPSS). Both descriptive as well as inferential statistics were employed. The analyses focused not only on providing a detailed description of the cases under study (largely through the use of univariate

measures), but also in assessing potential relationships between these variables and the two principal dependent variables.

First, all data were coded into variables with values that aligned with the type of variable. For example, values of 1 through 4 were assigned to current charge type, with 1 being a violent offence, 2 a property offence, 3 an administration of justice offence, and 4 a firearms offence. For cases that had more than one current charge, the case was classified by the most serious offence using the ACCS seriousness ranking.¹⁷ Certain variables were also recoded during this step in order to collapse the value categories for more succinct information. For example, the variable “total number of administration of justice convictions” was recoded into the following categories: 0, 1 to 4, 5 or more convictions.

Measures of central tendency were calculated for all variables related to the show cause hearing process. Overall, the dependent variable of the total length of the show cause hearing was measured in terms of those factors related to the process that contribute to time spent in the hearing. More specifically, show cause hearings were described in terms of the mean, and median, as well as the minimum and maximum length of time taken to question witnesses, time taken for recesses and decision breaks, and time waiting.¹⁸ This breakdown of the overall process permitted the identification of those variables that were consuming the most time, and thus contributing disproportionately to a lengthier hearing.

Further, a number of cross tabulations were conducted in order to illuminate any potential relationships between the other dependent variable - final decision - and several independent

¹⁷ See Appendix B for the ACCS seriousness ranking.

¹⁸ “Time waiting” is the amount of time that the court is in session but is waiting to proceed for a variety of reasons (e.g., waiting for the judicial officer/Crown to return or for the accused to be brought back to the courtroom from the holding cells following an official break).

variables. For example, the total number of violent charges with which the accused had been charged was compared with the final decision resulting from the show cause hearing. Additionally, the potential association between the existence of a criminal record and the final decision was examined. Notably though, it is important to recall that the total sample consisted of only 25 show cause hearings. As such, the “strength of the association” was prioritized over the statistical significance of the correlations. These cross tabulations highlighted a number of interesting findings that contribute to a more complete understanding of show cause hearings in Ontario bail court and their potential contribution to court delay.

Once these statistical analyses were completed, they were supplemented with qualitative data from the show cause hearings. The research assistant had taken detailed notes of every case heard during the collection period. This included, for example, questions asked by defence counsel and Crown prosecutors, as well as comments made by the judicial officer. Such qualitative data are particularly helpful when used in tandem with the quantitative data. Specifically, they provide important context to those cases in which the quantitative data lack detail or are situation-specific. This richer contextualization facilitates a greater understanding of the processes and outcomes of show cause hearings. Compare, for example, the simple reporting of the amount of time taken by the judicial officer for “recesses” – that is, “pauses” in the hearing with more qualitative data that can provide the wider context and understanding of these recesses. Lengthy pauses in a show cause hearing are often perceived as something to be avoided, given that they contribute to long case processing times and, by extension, court delay in resolving the question of bail. However, additional qualitative data (as were provided in case 7, for instance) can be used to explain the root of the pause in proceedings. In this specific case, the judicial officer took a pause to call shelters in the area that might be able to accommodate the accused as they did not want to detain this

individual unless absolutely necessary. In this case, this recess may justifiably be seen in a positive light given that it contributes to a reduction in the number of accused persons detained.

3.6 - ETHICAL CONCERNS

The primary research from which the data for this study derives would be appropriately described as drawn from a non-participant observational study. Non-participant observation is a “relatively unobtrusive qualitative research strategy for gathering primary data about some aspect of the social world without interacting directly with its participants” (Williams, 2016, p. 561). The primary researcher attended the show cause hearings as they were being conducted in one of Ottawa’s bail courts. Importantly though, despite being in the courtroom, the research assistant did not immerse themselves in the hearing in any way, nor did they make any attempts to communicate with those involved in the hearing such as the attorneys, the accused, or the judicial officer. It is also important to recall that criminal courts are public such that they are open to the public in most cases.

Just as relevant, all of the data used in this current study were completely anonymized such that all identifiable information (i.e., name, race, place of employment) was removed. As such, the accused involved in any of the cases cannot be directly - or indirectly - identified. Therefore, there is an extremely low risk of harm to the subjects of said research and thus raise very few, if any, ethical concerns.

4 – ANALYSIS

The sample used for this study is comprised of 25 show cause hearings that were held in March and April of 2017 and 2018 in the various bail courts within the courthouse under study. This section presents the findings from the quantitative analyses as well as provides broader qualitative descriptions to inform them. The primary immediate objectives are rooted in a focused attempt to uncover the kinds of individuals and offences that proceed to show cause hearings, and what these hearings look like in terms of their process and outcomes. These immediate objectives serve a greater purpose in determining certain characteristics of a show cause hearing that potentially contribute to unreasonable court delay.

4.1 - SAMPLE CHARACTERISTICS

Overall, the characteristics of individuals who proceeded to a show cause hearing in this sample were mostly adults (88% or 22 cases) and male (84% or 21 cases). In fact, only three accused involved youths, and four accused were female. It should be noted that for over half of the sample (52% or 13 cases), Indigenous identity was unknown. Of the remaining 12 cases, 28% (7 cases) of accused were explicitly mentioned as not being of Indigenous identity, while 20% (5 cases) of accused were explicitly mentioned to be Indigenous.

4.1.1 - Criminal Record

In addition, 80% (20 cases) of accused in this sample had a criminal record. The characteristics of these criminal records, and their distributions, are displayed in the following table.

Table 4.1.1: Criminal Record Characteristics

	# Yes (%)	# No (%)	Total
Presence of Violence on CR	13 (68.4%)	6 (31.6%)	19 (100%)
Administration of Justice Convictions	17 (85%)	3 (15%)	19 (100%)
Both Violence and Administration of Justice	10 (52.6%)	9 (47.4%)	19 (100%)

Note: the figures for this table are based on a sample size of 19. Although there were 20 cases in which the accused had a criminal record, the contents of the criminal record were unknown in Case 9.

As one might expect, most of the cases in this sample of show cause hearings (about 68%, or 13 cases) involved accused persons who had a history of committing serious offences, in that their criminal record listed at least 1 prior conviction involving violence. However, administration of justice offences seemingly dominated these cases, as an overwhelming 85% (17 cases) included at least 1 charge of this nature on their criminal record.¹⁹ The combination of the 2 factors of violence and administration of justice convictions shows that over 50% (10 cases) of this sample had criminal records that reflected a history of both violence and most likely breaches of a court order.

Due to the high prevalence of administration of justice convictions in this sample, it is relevant to understand the frequency of this type of conviction on the individual criminal records. The following table illustrates the distribution of the various types of administration of justice convictions in this sample.

¹⁹ As previously defined, an administration of justice offence is one in which an individual fails to comply with certain conditions that they are legally mandated to obey, typically in relation to previous release orders or sentences.

Table 4.1.2: Total Administration of Justice Convictions

		Frequency	Percent
Valid	1 to 2 Convictions	7	46.67
	3 to 5 Convictions	4	26.67
	6 or more Convictions	4	26.67
	Total	15	100.0

Note: While this table suggests that there were only 15 cases with administration of justice convictions, there were, in fact, 2 additional cases in which the accused had administration of justice convictions but the number of which was unknown.

As Table 4.1.2 indicates, just under half (about 47% or 7 cases) had 1 to 2 administration of justice convictions on their criminal record (for those in which the type of prior convictions was known). Although 1 to 2 convictions of this kind are not surprising, perhaps more notable is that this finding shows that over half (about 53% or 8 cases) had 3 or more prior administration of justice convictions. While the maximum number of administration of justice convictions in any particular case in this sample was 42 (in Case 25)²⁰, the mean number is 6.27, with a median of 3.²¹ Clearly, prior administration of justice convictions are not uncommon for cases being held for a show cause hearing. In fact, one might suggest that they are a defining characteristic.

4.1.2 - Active Offences

A discussion of the characteristics of an active case might include a description of not only the current charges, but also any outstanding charges that the judicial officer must consider at a show cause hearing. Current charges refer to those with which the accused had most recently been

²⁰ While 42 administration of justice convictions may indicate a lengthy criminal record, the earliest conviction that the accused from Case 25 had was from 2009, with the latest in 2017 (Case 25 was heard in 2018).

²¹ Thus, the sample is positively skewed, in part because the accused in Case 25 had 42 convictions for administration of justice offences on their criminal record. It was not known from the hearing for Case 25 what the distribution of these administration of justice offences was across charges of 'failure to comply' and 'failure to appear'.

charged (and of which have not yet been adjudicated). While these current charges might appear as the most relevant to the show cause hearing, the prevalence and seriousness of any outstanding charges is also notable, as a judicial officer must consider both in the proceeding, in which the discussion of total charges is presented.

The mean number of current offences that this sample of accused had been charged with in their show cause hearing was 3.84 charges, with a median of 2. The number of current charges ranged from 1 to 11. While the most common number of current charges was 3-4 (40% or 10 cases), 16% (or 4 cases) were facing 7 or more current charges. As a case in point, Case 2 had 11 current charges which included 3 counts of robbery with a firearm. The following table illustrates the distribution of the different types of current charges in this sample, based on the most serious charge.²²

Table 4.1.3: Most Serious Current Charge Type

		Frequency	Percent
Valid	Violent Offence	16	64.0
	Property Offence	2	8.0
	Administration of Justice Offence	6	24.0
	Firearms Offence	1	4.0
	Total	25	100.0

As Table 4.1.3 indicates, the majority (64% or 16 cases) of accused were charged with a violent offence as their most serious current charge. While it is not surprising that almost two thirds of the

²² As demonstrated previously, seriousness of offence was coded in a ranked order, with ‘violent’ as the most serious, followed by ‘property’, ‘administration of justice’, ‘firearms’, and finally ‘drug-related’ offences. Seriousness of offence was determined according to the Adult Criminal Court Survey (ACCS) ranking system.

cases that proceeded to a show cause hearing had current violent charges, it is notable that of those with current violent charges, just under 44% (7 of these cases) had only 1 current violent charge. In contrast, about 19% (3 cases) had 4 current violent charges (which was also the maximum). For example, the accused in Case 1 was charged with sexual assault, assault, aggravated assault, and forcible confinement.

Perhaps more surprising is that 6 cases had an administration of justice offence as their most serious current charge. Similarly, current administration of justice charge(s) were actually present in 16 cases (64%) overall. The following table illustrates the distribution of the number of cases with this type of charge.

Table 4.1.4: Number of Current Administration of Justice Charges

		Frequency	Percent
Valid	1 Charge	7	43.75
	2 Charges	7	43.75
	3 or More Charges	2	12.50
	Total	16	100.0

Note that this table has a sample size of 16 because 9 cases did not have current administration of justice charges.

Given the increased practice by the police of charging accused persons with this type of offence, it may not be unexpected that most of the accused with current administration of justice charges had 1-2 charges of this type (almost 88%, or 14 cases). Notably though, 2 cases (just over 12%) still faced 3 or more current administration of justice charges. The maximum number of current administration of justice charges was 6 – found in Case 19. The accused in this case had been charged with 5 counts of failure to comply with a release order and 1 count of being “unlawfully at large” while serving an intermittent sentence.

It is also important to consider the presence and number of outstanding charges, as judicial authorities have to take both current and outstanding charges into account when making their decision to ultimately release or detain the accused. Outstanding charges refer to any prior charges that the accused received which had not yet been adjudicated at the time of the show cause hearing.²³ The mean number of outstanding charges for this sample was 3.71 (median=1.5). The following table indicates the distribution of the number of these charges.

Table 4.1.5: Number of Outstanding Charges

		Frequency	Percent
Valid	0 Charges	10	41.67
	1 to 4 Charges	10	41.67
	5 or More Charges	4	16.67
	Total	24	100.0

Note: While this table suggests that only 24 cases referenced the presence and prevalence of outstanding charges, an additional case (Case 16) indicated that there were outstanding charges, but the number of which was unknown.

As Table 4.1.5 illustrates, although just under 42% of the accused (10 cases) had no outstanding charges, the same number (10 cases) had 1-4 outstanding charges. Notably, almost 17% (4 cases) of the accused were facing 5 or more outstanding charges. Symptomatically, the accused in Case 14 had a total of 6 outstanding charges for 5 counts of assault, and 1 count of failure to comply with a recognizance order. For those with outstanding charges (and for which the number is known), slightly more than 57% (8 cases) had outstanding charges for violent offences. An

²³ More specifically, outstanding charges exist when an accused is currently facing other criminal charges and has yet to go to trial or enter a guilty plea for them. Likely, accused with outstanding charges have been released (either directly by the police or released through the courts after being held for a bail hearing) in relation to other charges, and are now being brought back to court on new charges.

example of a case with outstanding violent charges was Case 15, in which the accused had not yet had their previous charges for manslaughter and aggravated assault adjudicated.

An exceptional case regarding outstanding charges was Case 4 in which the accused faced 40 outstanding charges, all of which were administration of justice charges. This case represented the maximum number of outstanding charges, with this individual having experienced a significantly greater number of this type of offence than any others in this sample. Not surprisingly, this case contributed to the elevated means of both the number of outstanding charges and the number of total charges.

“Total charges” refer to the overall number of active charges that the accused had, including both current and outstanding charges. The most serious charge is defined as the *total* charge type, regardless of whether it was a current or outstanding charge. The mean number of total charges (for which the number is known) was 7.36 (median=4). While 36% (9 cases) of accused in this sample had a total of 3 to 4 charges, 32% (8 cases) had 7 or more charges overall. The maximum number of total charges was 44 (obviously representing Case 4). Notably though, the accused in Case 1 faced a total of 17 charges, 8 of which were current charges that included aggravated assault and forcible confinement, and the other 9 outstanding charges included uttering threats and criminal harassment.

As indicated in Table 4.1.6 20 (80%) of the 25 cases in this sample represented hearings in which the most serious charge, and thus the total charge type, was a violent offence. The following table illustrates the distribution of charges based on “total charge type” of the most serious charge.

Table 4.1.6: Total Charge Type (Most Serious Charge)

		Frequency	Percent
Valid	Violent Offence	20	80.0
	Property Offence	2	8.0
	Administration of Justice Offence	2	8.0
	Firearms Offence	1	4.0
	Total	25	100.0

While only 1 of the cases was labelled a firearms offence (precisely because this type of offence represented the most serious charge in the case), roughly a quarter of cases (24% or 6 cases) included a firearms-related offence. Equally notable, although domestic violence is not a “type” of offence and thus not a unique category included in Table 4.1.6, 24% (6 cases) of the cases had offences that involved domestic violence. Interestingly, the accused in Case 11 was charged with fraud, criminal harassment, and failure to comply with a “no contact” order. The details of the charges brought forth a debate in the courtroom of whether this was a case of domestic violence, as the current charges did not indicate any physical violence perpetrated by the accused. The facts of the offences showed that the accused was tracking the whereabouts of his estranged wife and daughter, trying to contact his mother-in-law to establish contact with his wife and had an outstanding domestic violence assault charge. Based on these facts, the judicial authority confirmed that it was, in fact, a case of domestic violence as the accused was exhibiting “threatening conduct”.

Due to the nature of show cause hearings as typically proceedings involving more serious charges, it is surprising that Table 4.1.6 shows 2 cases in which the total charge type was a property

offence. Arguably even more unexpected are the 2 cases in which the most serious charge was an administration of justice offence. Having said this, the accused in Case 6 was charged with 2 counts of arson when he allegedly set fire to a unit and hallway on the third floor of an apartment building. So, while it may seem unusual that a property offence would be the most serious charge overall in a show cause hearing, arson is a serious property crime. Similarly deceptive, Case 9 represented an accused charged with possession of marijuana, possession of the proceeds from crime, having a concealed weapon, and failure to comply with a probation order. The 3 charges other than the “failure to comply with a release order” offence were deemed lower on the severity list according to the ACCS, thus making the failure to comply with a release order the most serious offence.

Perhaps requiring even more “context”, Table 4.1.6 indicates that in 1 case, the most serious offence was a firearms offence. In this case (Case 5), the accused was charged with possession of a weapon for a dangerous purpose, possession of an unauthorized firearm, and possession knowing it was unauthorized. This is arguably an interesting case to be dealt with through a show cause hearing as no violent or property offences were committed. However, the accused was found by police with the firearm after he had been assaulted, allegedly looking for the person who had assaulted him, perhaps implying that there was violent intent and thus justifying the show cause hearing. Indeed, violent offences seemingly dominant show cause hearings, being the most serious charges in 20 out of the 25 cases in this study.

4.2 - THE SHOW CAUSE HEARING PROCESS

4.2.1 – Onus

The onus of these hearings was almost evenly split, with 52% (13 cases) of hearings with a Crown onus and 48% (12 cases) having a reverse onus. A Crown onus is the default position for

show cause hearings, as the Crown has the responsibility to “show cause” as to why the accused should *not be released* pending trial. Case 1 provided an overview of a typical discussion in a Crown onus hearing. In this case, the accused was charged with a number of assault charges, 2 counts of failure to comply with a release order, 2 counts of mischief to property under \$5000, as well as forcible confinement. The hearing began with the Crown’s position for detention in which the details of the allegations as well as the accused’s criminal record and history of violence were presented. The Crown also stated that the accused had previously scored high on a domestic violence risk assessment tool, suggesting a likelihood of committing acts of domestic violence in the future.

In contrast, reverse onus provisions are those in which the defence must “show cause” why the accused *should be released* pending trial. Reverse onus situations may occur in bail court for a number of reasons, although the following list is not exhaustive.²⁴ First, a reverse onus provision is statutorily applied to some (but not all) drugs and firearms offences. In addition, reverse onus provisions are triggered when an accused who was previously on bail has been charged with a failure to comply with a release order. Last, a reverse onus can be applied in bail court when an accused is charged with committing an indictable offence while on bail for a previous indictable offence. A typical discussion of a reverse onus could be seen in Case 21, in which the accused was charged with armed robbery and possession of a stolen vehicle. Due to the commission of the offence with a firearm, this charge fell under the reverse onus provision in section 515(6)(a)(vii) of the *Criminal Code*. Defence counsel relied heavily on the argument that the Crown had very little strong evidence to justify detention given that the accused was arrested only the day before, leaving very little time for a search warrant to have been executed and, by extension, yielding the

²⁴ All instances of reverse onus situations can be found in section 515(6) of the *Criminal Code*.

necessary evidence. The defence relied on a less detailed description of the alleged offences and on the circumstances of the accused that indicated a lack of the common bail risk factors, such as drug or alcohol use, lack of permanent residence, or the lack of a steady job.

Equally interesting, the type of applicable onus at a show cause hearing was not always obvious. In fact, the issue was actually debated in Case 5 as neither the Crown, defence, nor the judicial officer was certain who bore the onus. The charges were for possession of a weapon for a dangerous purpose, unauthorized possession of a firearm, and possession of a firearm knowing it was unauthorized. While there is a number of firearms-related offences identified as having a reverse onus provision,²⁵ Case 5 was ultimately settled as being a Crown onus case, but only after a clerk had looked it up in the *Criminal Code*.

4.2.2 - Grounds for Detention

The grounds for detention are another element that is necessary in order to understand the process of a show cause hearing. For every case in this sample, the secondary ground was invoked as one of the reasons justifying detention. Comparatively, the primary and tertiary grounds were only marginally raised and only in combination with the secondary grounds.

²⁵ Provided in section 515(6)(a) of the *Criminal Code*.

Table 4.2.1: Grounds Referenced

		Frequency	Percent
Valid	Secondary Grounds	15	62.5
	Primary and Secondary Grounds	4	16.7
	Secondary and Tertiary Grounds	2	8.3
	ALL Grounds	3	12.5
	Total	24	100.0

Note: This table describes only 24 cases, as there was 1 case (Case 7) in which the grounds for detention were unknown because the first day of the show cause hearing was not a part of the data collection period. Only the decision was given during this latter court appearance and the judicial officer did not repeat the original grounds for detention.

As shown in Table 4.2.1, the primary grounds were raised in 7 cases,²⁶ while the tertiary grounds were referenced in only 5 cases.²⁷ Case 25 exemplifies the former. The accused was charged with causing a disturbance, assaulting a peace officer, and 2 counts of failure to comply with a probation order. The focus in justifying detention on the primary grounds was largely directed at the accused's extensive criminal record - 165 convictions of which 42 were breaches of court orders. While the invocation of the primary grounds as a concern in this case might suggest that at least some of these administration of justice convictions would be for a failure to appear in court, the breakdown of this type of conviction was (perhaps surprisingly) not discussed in the bail hearing. Although the accused was released, the judicial officer still noted the extensive history of breaches as a significant risk factor in terms of the primary grounds.

²⁶ Primary grounds were referenced in the 4 cases that indicated both the primary and secondary grounds as the position for detention, as well as the 3 cases that indicated all 3 grounds as the position for detention.

²⁷ Tertiary grounds were referenced in the 2 cases that indicated both the tertiary and secondary grounds as the position for detention, as well as the 3 cases that indicated all 3 grounds as the position for detention.

With regards to the tertiary grounds, the accused in Case 2 was charged with 3 counts of robbery with a firearm, 3 indictable firearms offences, conspiracy to commit an indictable offence, wearing a face mask in the commission of a crime, obstructing a peace officer, 3 counts of pointing a firearm, and a breach of a previous release order. While all 3 grounds were initially raised in this case, the judicial officer detained the accused on the secondary and tertiary grounds, with specific mention of the very strong evidence and gravity of the offences as a reason why the release of the accused would not only put the safety of the public in jeopardy but would also result in the loss of confidence in the justice system.

4.2.3 - Number of Days

The average number of days over which a show cause hearing took place was 1.28 days. While most (76% or 19 cases) were completed in 1 day, 5 (20%) hearings took place over the course of 2 days, and 1 (4%) hearing spanned 3 days. It should be noted that the number of days does not necessarily mean that the hearing took an entire day. Rather, it simply indicates the span of days over which the hearing was extended. The 3-day hearing (Case 15) will be subsequently discussed in more detail, as it has unique characteristics to consider in the discussion of the length of show cause hearings. However, it is remarkable that 6 hearings in a sample of only 25 were extended beyond 1 day in length. Notably for 4 (Cases 3, 4, 7 and 13) of these 6 cases, the actual hearing did not extend into the second day. Rather, it was the judicial officer who delayed handing down the decision until the second day. For example, the only court business that took place in Case 3 on the second day of the hearing was to announce the decision.²⁸ Having said this, despite the absence of any closing or opening remarks, witnesses questioned, or conditions to discuss on

²⁸ Note, the first day of the hearing for Case 3 did not fall within the collection period (and, as such, the only information pertaining to this case is in reference to the decision and not the actual proceedings).

the second day in the show cause hearing of this case, the judicial decision still took 21 minutes. In contrast, Case 13 exceeded 2 days and still ended with no decision within the collection period. This case extended from 10:46am to 3:39pm on the first day and resumed 2.5 weeks later²⁹ at 10:17am. At 12:10pm of the second day, the judicial officer stated that they were “not prepared” to give a decision that day, and that the decision would be rescheduled for a date the following week.

4.2.4 - Total Length of Hearings

This next section breaks down the total length of the hearings in an attempt to highlight the various components of a show cause hearing as well as how each contributes to the overall hearing length. The total length of each show cause hearing captures the time from the opening remarks to the pronouncement of the decision (including breaks). The mean was calculated as 150.68 minutes (2 and a half hours). Importantly though, the range of the total length of the hearing extended from a minimum of 22 minutes to a maximum of 1018 minutes (almost 17 hours). Having said this, it should be noted that the median total length of the hearing was 73 minutes, indicating that the mean was skewed by a small number of cases that were significantly longer than the rest of the hearings in the sample.

As another meaningful descriptor of “time”, the mean total “working” length of the hearing - excluding breaks and recesses – was 91.74 minutes (about an hour and a half), with a median of 67 minutes. Interestingly, the minimum total length (again excluding breaks and recesses) was 22 minutes, with a maximum of 568 (roughly 9 hours). The following table illustrates the variation in the total length of the hearings in this sample. Table 4.2.2 is divided into 2 sections in order to

²⁹ The Crown, Defence and Judicial Officer all had conflicting schedules over these 2.5 weeks, leading to the lengthy period between the first and second days.

illustrate the difference in total length when official breaks and recesses³⁰ are included or excluded from the total time.

Table 4.2.2: Total Length of Hearing

	(a) Total Length of Hearing <i>Including</i> all Breaks and Recesses		(b) Total Length of Hearing <i>Not Including</i> Breaks and Recesses	
	Frequency	Percent	Frequency	Percent
One Hour or Less	8	42.1	9	47.4
More than One to Three Hours	7	36.8	8	42.1
More than Three Hours	4	21.1	2	10.5
Total	19	100.0	19	100.0

Note: The sample size for this measure was 19 as 6 cases were excluded from the calculation of total length. For 4 of those cases, a portion of the hearing occurred outside of the court observation time such that the total length is unknown. The remaining 2 cases were abandoned and thus, incomplete. For 1 abandoned case, new charges were applied during the hearing following the execution of a search warrant. For the other abandoned case, a clerical error with the previous release order (in which the current charge was erroneously added) led to an unnecessary hearing.

As Table 4.2.2(a) indicates, and contrary to what one might expect given that the purpose of show cause hearings is to be a short determination of detention or release prior to a trial, less than half (about 42% or 8 cases) of the hearings were completed in 1 hour or less, with the shortest (both Cases 8 and 14) completed in less than 25 minutes. In contrast, and perhaps shockingly, there were 4 cases that took 3 hours or longer, with the maximum total length being just under 17 hours (Case 15). However, Table 4.2.2(b) indicates that when the time taken for breaks and recesses was removed from the total length, 2 of the hearings that originally were in excess of 3 hours were subsequently reduced to less than 3 hours. Indeed, with breaks and recesses, Case 2 spanned 4

³⁰ Official breaks and recesses include the time taken by the judicial officer to deliberate and draft a decision as well as lunch breaks, and recesses in active court.

hours and 3 minutes, and Case 5 was completed in 4 hours and 43 minutes. However, without breaks and recesses, Case 2 was substantially reduced to 1 hour and 46 minutes, and Case 5 to 1 hour and 7 minutes. This indicates that for at least 2 of the cases, the breaks were a significant contributing factor to their total length. It is clear that Case 15 – which took 1018 minutes – is an anomaly and explains why the overall mean (of all observed cases) was so much higher than the median length of total time. On the other hand, the remaining 3 cases that spanned more than 3 hours including all breaks and recesses still ranged from 243 to 294 minutes without breaks and recesses (roughly 4-5 hours).

In contrast, Case 15 was the only one in the sample that was conducted (and completed) over 3 consecutive days.³¹ This was a particularly unique case for a number of reasons, all of which possibly contributed to its length. It involved a youth accused who was also an Indigenous female, who had 2 current charges of failure to comply with a release order. Further, this accused had outstanding charges - for which she was already on bail - for manslaughter and aggravated assault. These outstanding charges constituted the most serious offences of all of the cases in the sample. While one might assume that the lengthy processing time associated with this case is rooted in the severity of the charges, there were others in this sample that also dealt with serious charges and were completed in less than 45 minutes. Indeed, the accused in Case 6 was charged with 2 counts of arson, yet the case was completed in 37 minutes. Likewise, the current charges in Case 14 were for mischief to property, assault, resisting arrest, causing a disturbance, and possession of a schedule I drug (under the *Controlled Drugs and Substances Act, 1996*). The accused also had 6

³¹ Although Case 13 was also conducted over at least 3 days, the third day fell outside the collection period and thus it is unknown if it was completed on the third day.

outstanding charges, 5 of which were assault charges. These still represent serious charges, yet the case was heard and completed in 22 minutes.³²

Components of show cause hearings that contribute to their length and possible delays include: the length of time taken for opening statements; “time waiting in active court”³³; the time spent questioning witnesses; the time taken for closing statements; the length of breaks taken (if any) to deliberate before handing down the decision; the length of recesses³⁴ taken throughout the hearing; and how long it took to deliver the decision. The following table breaks down these components to illustrate their respective contributions to the total length of hearings.

³² As one might imagine, Cases 6 and 14 did not have any breaks or recesses.

³³ “Time waiting in active court” is the amount of time in which the court is in session but is waiting to proceed for a variety of reasons (e.g., waiting for the judicial officer/Crown to return or for the accused to be brought back to the courtroom from the holding cells following an official break).

³⁴ “Recesses” are official breaks taken throughout the hearing for reasons other than for deliberation. For example, they represent out-of-court activity necessary for the advancement of the hearing (e.g., contacting shelters). As Cases 13 and 15 had lunch breaks that were not included in decision breaks, they were included in “recesses”.

Table 4.2.3: Factors Contributing to Total Length (in minutes)

	Mean	Median	Minimum	Maximum
Opening Time ³⁵	17.27	9.50	1	69
Questioning Witnesses ³⁶	45.90	20	7	371
Closing Time ³⁷	13.26	5	0	114
Decision ³⁸	13.36	9	2	50
Time Waiting	7.20	2	0	54
Decision Breaks ³⁹	84.75	71.5	12	331
Recesses ⁴⁰	30.63	15	10	119
<i>Total Time (with Breaks & Recesses)⁴¹</i>	<i>150.68</i>	<i>73</i>	<i>22</i>	<i>1018</i>
<i>Total Time (without Breaks & Recesses)⁴²</i>	<i>91.74</i>	<i>67</i>	<i>22</i>	<i>568</i>

4.2.5 - Opening Statements

The length of time spent presenting opening statements is one contributor to court processing time. Opening statements are meant to provide a short synopsis of the facts of the alleged offences and the circumstances of the accused (e.g., their criminal record). Illustrated in Table 4.2.3, the mean opening time was 17.27 minutes, and the range for opening time was a minimum of 1 minute (in Case 20) to a maximum of 69 minutes in Case 13. This latter case

³⁵ The sample size for this variable is 22 as the opening statements for 3 cases occurred outside of the observation period.

³⁶ For this variable, the sample size is 20 as 3 cases did not call witnesses and thus, had 0 minutes devoted to questioning. For the remaining 2 cases, witnesses were questioned outside of court observations and as such, cannot be accounted for in their entirety.

³⁷ The sample size for this variable is 23 because the closing statements for one case were heard outside of court observations, and another case was abandoned prior to closing statements.

³⁸ The sample size for this variable is 22 as 2 cases were abandoned either before or during the presentation of the decision, and the decision for 1 case was presented on a third day, falling outside of the observation period.

³⁹ Decision breaks represent the time taken exclusively for the judicial officer to deliberate. However, oftentimes, lunch breaks were included within the decision break. As such, the amount of time spent for lunch vs. for deliberation could not be accounted for from the court observations.

⁴⁰ 32% of the hearings took breaks coded as “recesses”.

⁴¹ The sample size is 19 for this variable because the total time taken for 6 cases could not be accounted for due to some elements occurring outside of the observation period, or because the case was abandoned and thus, incomplete.

⁴² Similarly, the sample size is 19 for these variables for the same reasoning as the previous one.

involved an accused charged with bank robbery, 2 counts of failure to comply with a court order, possession of a firearm, and wearing a disguise in the commission of an offence. Interestingly, both the Crown and defence in this case provided their opening statements and then the hearing broke for lunch directly afterwards. When the hearing resumed after the lunch break, both the Crown and the defence provided their opening statements a second time. There appeared to be no obvious reason why this repetition was done. Further, the opening statements provided after lunch were roughly the same length of time as the ones provided prior to lunch.

In addition, 4 other cases had opening times that exceeded 20 minutes. Comparatively, some cases in this sample had opening times totaling only a few minutes. For example, Case 24 was a female accused charged with robbery with a weapon. The total opening time for this case was 5 minutes; 4 minutes for the Crown's opening statement, and 1 minute for the defence. In the opening statements, the criminal record of the accused was read in and the synopsis of the alleged offence was provided to the judicial officer, then the court moved on to call witnesses.

4.2.6 - Questioning Witnesses

An additional contributing factor to the total length of show cause hearings is the element of witnesses. Both the number of witnesses questioned in the hearings as well as the length of time that they were questioned contributed to the total length of the hearing. Across the 25 show cause hearings in this sample, only 12% (3 cases) did not call any witnesses. The number of witnesses being questioned varied, with 60% (15 cases) having 1 witness, and 28% (7 cases) having 2 or more witnesses questioned.⁴³ Case 15 was an exceptional case in this regard as 5 different witnesses were questioned, including: the accused's case manager from the Elizabeth Fry Society,

⁴³ This breakdown totals 22 cases, as 3 cases (Cases 4, 7, and 16) did not have any witnesses questioned.

the accused's mother, a youth diversion outreach coordinator, the investigating police officer, and a youth probation officer. The following table provides a breakdown of the percentages and number of cases by the type of witnesses questioned in these hearings, based on the 22 hearings that did, in fact, have witnesses.

Table 4.2.4: Distribution of Witnesses by Type

<i>Witness Type:</i>	% of cases	# of cases
Accused	59.1%	13
Sureties	45.5%	10
BVSP ⁴⁴	9.1%	2
Police	9.1%	2
Complainant	4.5%	1
Other	4.5%	1

Note: The totals of this table exceeds 100% (or 25 cases) because multiple types of witnesses can be called in one case.

As Table 4.2.4 indicates, more than half (slightly over 59% or 13 cases) of the cases that did call witnesses questioned the accused. Illustratively, the accused in Case 19 was charged with 5 counts of failure to comply with a court order, possession of marijuana, and being unlawfully at large while serving an intermittent sentence. The defence asked the accused questions about his work and residence, if he uses drugs or drinks alcohol, and what a good plan for release would be for him. The Crown asked the accused about his previous court orders and whether he had ever been on a probation order. The Crown also discussed potential release conditions with the accused.

⁴⁴ BVSP is an abbreviation for Bail Verification Supervision Programs and in Table 3.4, refers to an employee, typically a supervisor, of such program.

Sureties were the next most common type of witness questioned (just under 46% or 10 cases), and only 1 case (Case 9) had 2 sureties questioned. While BVSP supervisors and police officers were seldom questioned (about 9% or 2 cases for both), it is important to note that witnesses other than the accused and potential sureties were being questioned in show cause hearings. As also indicated in Table 4.2.4, 1 case (Case 18) questioned the complainant as a witness. This was an interesting case, as the complainant was the husband of the female accused, charged with assault against him. He was questioned in this case because the accused was living with him and their family, and also because they were refugees and did not have any other family or friends living in the country. The “other” in Table 4.2.4 was relative to Case 17, in which the girlfriend of the accused was questioned as a witness. This witness does not fit into any other category because she was not a surety, nor a complainant; she allegedly instigated the failure to comply with a court order charge against the accused by asking him to come to her house, which he was prohibited from doing according to his previous release order.

In addition to the number of witnesses that were questioned, the amount of time that was taken to question them also contributed to the total length of the show cause hearings. The following table provides an illustration of the distribution of total time spent questioning witnesses.

Table 4.2.5: Total Time Spent Questioning Witnesses

		Frequency	Percent
Valid	1 to 10 Minutes	2	10.0
	11 to 20 minutes	8	40.0
	21 to 45 Minutes	6	30.0
	46 Minutes or More	4	20.0
Total		20	100.0

Note: Table 4.2.5 has a sample size of 20, as 3 cases (Cases 4, 7, 16) did not have witnesses called. Notably though, there were witnesses in Case 3 but as only the second day (decision) of the show cause hearing was observed as part of this research project, witness time is unknown. Equally relevant, Case 12 was abandoned prior to the questioning of the witnesses.

As illustrated in Table 4.2.3, the mean total time spent questioning witnesses was 45.90 minutes. However, the median was 20 minutes, indicating that the mean was again skewed by a small number of cases in which there was a significantly longer period of time spent questioning witnesses. As seen in Table 4.2.5, of those with witnesses questioned, 40% (8 cases) were taking between 11 and 20 minutes for questioning. Yet, it is still notable that 20% (4 cases) were taking longer than 46 minutes. This is important because while the minimum amount of time spent questioning witnesses was 7 minutes, the maximum was 371 minutes (roughly 6 hours). This latter finding relates to Case 15 in which 5 witnesses were questioned. The second highest total time spent questioning witnesses occurred in Case 13 in which 3 witnesses were questioned, taking a total of 120 minutes (2 hours). While it is clear that the number of witnesses and the time spent questioning them vary in this sample, the above findings indicate that witness questioning remains a formidable contributing factor to court processing time.

An important factor contributing to the length of time spent questioning witnesses was the types of questions asked. In particular, one might be tempted to suggest that some of them were unnecessary. For example, in Case 9, the accused's brother and mother were being questioned as sureties for the accused. Within this context, the Crown asked a number of detailed (as well as arguably inappropriate) questions such as "Do you make efforts to make him law-abiding?" When the mother responded affirmatively, the Crown followed up with the statement, "but he continues to break the law". In other cases, witnesses were asked to review and confirm facts of the case that had been previously entered into the court record.⁴⁵ For example, the complainant in Case 18 was questioned about previous assaults that his wife (the accused) had perpetrated against him in the past, which were indicated on the criminal record and previously presented to the court.

4.2.7 - Closing Statements

Similar to time spent for opening statements, time spent for closing statements was another area contributing to the length of show cause hearings, although perhaps not as significant as other elements. In this sample, the mean closing time was 13.26 minutes (Table 4.2.3). Notably, the range of time used in this sample for this variable was between 0 minutes and 114 minutes. While some cases opted not to make closing statements (Cases 7, 14, & 19), Case 15 heard closing statements for 114 minutes (almost two hours). While this long closing period could have been due to the fact that the hearing spanned multiple days and included 5 witnesses, 60% (12 cases) of those with closing statements still managed to make them within a range of 1 to 10 minutes. Thus, Case 15 may simply be an anomaly.

⁴⁵ It should be noted that often in bail hearings, sureties are asked questions about the charges to determine whether the surety understands the allegations and their potential seriousness.

4.2.8 - Presenting the Decision

In addition, the time spent presenting the decision contributed to the length of show cause hearings. Although the mean appeared relatively low at 13.36 minutes,⁴⁶ about 45% (10 cases) of completed hearings⁴⁷ had decisions whose pronouncement exceeded 10 minutes, with 1 taking as long as 50 minutes (Case 15). Obviously, the information typically presented in the decision could influence the length of time to give it. Generally, a judicial decision includes a short restatement of the facts of the offence, as well as a brief overview of any relevant evidence or findings from the witnesses before the actual decision is given. If the decision is detention, the judicial officer gives a justification based on the relevant grounds for detention. If the decision is a release order, the judicial officer provides the type of release, as well as any conditions applied. For example, in Case 2, which involved an accused facing a number of charges including robbery with a firearm, the judicial officer reiterated the facts of the case as well as the findings from the questioning of witnesses. The judicial officer also discussed the relevant grounds previously mentioned at the beginning of the hearing, as well as restated the gravity of the charges.

4.2.9 - Time Waiting

Another factor contributing to the total length of show cause hearings is the amount of time waiting in active court. For this sample, this variable is defined as the amount of time spent when the court is actively in session for the hearing but waiting to proceed. As indicated in Table 4.2.3, although the mean amount of time waiting was only 7.20 minutes, the maximum was 54 minutes.

⁴⁶ The median decision length was 9 minutes.

⁴⁷ Note that ‘completed hearings’ refers to those which reached an actual decision. While 2 cases were dismissed in some way prior to the decision, 1 case (Case 21) was abandoned mid-decision following the results of a search warrant. As the decision had not yet been entirely given, Case 21 was also excluded from “completed hearings”. Thus, the numbers presented relative to the amount of time taken to present the decision are based on a sample size of 22.

To illustrate, although the court had already resumed after lunch, the judicial officer in Case 22 took a personal phone call upon returning which extended 32 minutes into the active court time, 17 minutes of which being attributed to time waiting.⁴⁸ All of the court actors had appeared on time and were simply waiting for the judicial officer to return in order to proceed. Less dramatically, there were also cases in which the court was waiting during active court time for much shorter periods. For example, the court in Case 2 had to wait 5 minutes for the Crown and accused to return following lunch. It should be noted that 12 (48%) cases had 0 minutes of time waiting in active court.

4.2.10 - Decision Breaks

Another notable contributing factor to the total length of a show cause hearing is the time spent on breaks while the judicial officer deliberated. Two things should be noted about these decision breaks: first, 12 (50%) hearings had a decision/deliberation break and 12 (50%) did not;⁴⁹ second, of the 12 that did include this type of break, it coincided with the lunch break in 6 cases (50%). For all decision breaks, regardless of whether lunch was taken simultaneously,⁵⁰ the mean length was 84.75 minutes (median=71.5 minutes).⁵¹ Notably, for those hearings in which the break did not occur over the lunch period, the mean length for the decision break was 33.8 minutes (median=32.5). As such, it can be concluded that the time spent deliberating the decision is also a

⁴⁸ 17 minutes of this phone call were attributed to time waiting, as everyone was waiting for the judicial officer to return to court, and 15 minutes was attributed to a recess, as the judicial officer eventually called into the court and requested a recess to address the phone call matter.

⁴⁹ The total number of cases described is only 24. The 25th case was the hearing that was abandoned due to court error (Case 12) and, as such, was coded “not applicable” for this variable. In Case 12, the accused was charged with a failure to comply with residing at a specific address while on bail. However, it was discovered that in the initial bail hearing the Court had recorded the address incorrectly, and the accused was not in violation of their bail.

⁵⁰ Note that for those decision breaks that did occur in conjunction with the lunch break, the amount of time spent on lunch versus the amount of time deliberating could not be determined.

⁵¹ Notably, for those hearings in which the break did not occur over the lunch period, the mean length for the decision break was 33.8 minutes (median=32.5).

significant contributor to court processing time. Further, any time spent on lunch during the decision break - while not accounted for in this sample as an individual element due to collection limitations - seemingly lengthens the amount of time spent away from the hearing.

4.2.11 - Recesses

Finally, in addition to decision breaks, a number of hearings in this sample took breaks referred to as recesses.⁵² While not every hearing included a recess - in fact, only 8 cases (32%) in this sample took this kind of break - it is still important to recognize their contribution to the total length of hearings. The mean time for recesses was 30.63 minutes (median=15 minutes), almost certainly skewed by Case 15 which took multiple recesses throughout the hearing, totalling 119 minutes. As this case extended across 3 days, the significant recess time included two lunch breaks and other breaks during which time the accused breastfed her newborn. Lengthy recess time was also notable in Case 13 which had recesses amounting to 37 minutes. In this case, the judicial officer called for recesses twice, in between the questioning of witnesses, lasting more than 15 minutes each. However, not all cases in this sample took lengthy recesses. Indeed, Cases 1, 5, 7, 12 and 22⁵³ had recesses that were relatively short. For example, in Case 1, the judicial officer decided that a short break (about 15 minutes) was required between the questioning of witnesses. In Case 5, the judicial officer had to interrupt the show cause hearing to attend a separate matter via video conference before questioning the accused, which lasted 15 minutes.⁵⁴ In Case 7, the

⁵² Recall that recesses include official activity outside of court in which some of the time involves independent lunches (of which were not simultaneous with decision breaks) as well as activity which advances the case.

⁵³ Case 22 had 15 minutes of time attributed to recess due to the unrelated phone call discussed in the section above on time waiting. Thus, there were 17 minutes of time waiting, and 15 minutes of recess attributed to this unrelated phone call.

⁵⁴ In 2017, video-conferencing matters were scheduled during regular bail court, sometimes interrupting show cause hearings as evident in Case 5.

court took a 10-minute break to call nearby shelters to see if the accused could be released to a shelter, before making the decision to detain or release.

4.3 - OUTCOME

Across the entire sample, 64% (16 cases) of the cases resulted in a release order of some kind, while 24% (6 cases) ended in a formal detention. Thus, while these cases were deemed serious enough to require a show cause hearing, the majority of the accused in this sample were still released on bail. Notably, the outcomes of the remaining three cases (12%) reflect those for which a decision was not recorded. The decision in Case 13 was rescheduled for a date falling outside of the data collection period while Case 21 was ultimately abandoned during the time in which the hearing was being conducted. Indeed, new charges were to be laid due to the discovery of firearms upon completion of a search warrant at the accused's residence. Finally, the charges were dropped in Case 12 upon discovering that the court had made an error in the accused's address when drafting their release conditions from a previous bail order, subsequently creating an erroneous charge for failure to comply with a release order.

Considering only the bail hearings that did, in fact, result in a decision, just under 73% (16 cases) were released while slightly more than 27% (6 cases) were detained. For those resulting in a release, about 81% (13 cases) were released on a recognizance without deposit order such that the accused were released on a bail order with conditions but did not have to pay a financial component upon release (but would in the case that they failed to abide by the stipulated conditions). The other 3 cases that were released but not on a recognizance without deposit were Cases 7 and 18 – in which the accused were released on an undertaking - and Case 9 – in which a recognizance with deposit was imposed. A recognizance with deposit is the same as a recognizance

without deposit but with a monetary component paid upon release. An undertaking is still a release order with conditions, but there is no financial component involved (even in the case of a failure to abide by any of the conditions imposed). However, the breach of any conditions of an undertaking is still a criminal offence and would result in a charge for failure to comply with a release order.

In Case 9, the accused was charged with possession of marijuana, possession of the proceeds from crime, having a concealed weapon, and failure to comply with a probation order. The judicial officer stated that due to the fact that the individual had not offended since 2015, they could be confident that the accused would follow conditions but placed a deposit of \$500 due to the circumstances of the sureties. Specifically, the court was not confident in the mother's ability to be an effective surety, and the brother (who was the other surety) had never acted as a surety before. Comparatively, the accused in Case 7 was charged with theft under \$5000 subsequent to stealing a bottle of alcohol from an LCBO, and 2 counts of failure to comply with a release order. The judicial officer emphasized that this individual was an Indigenous person from Nunavut who had been struggling with a severe alcohol abuse issue only after moving to Ottawa. The judicial officer released the accused on an undertaking because he did not have financial support, as he lived in a homeless shelter.

It is equally important to consider the final outcome of the hearings in relation to the characteristics of the cases and of the offences. The following tables illustrate a number of relevant correlations. It is important to clarify that due to the small sample size ($N=25$), inferential statistics were not performed. Rather, descriptive statistics were prioritized. Thus, the results presented in these tables and their interpretations cannot be generalized to the wider population of show cause hearings. They simply describe the findings relative to the 25 cases under study.

Table 4.3.1: Crosstab Total Number of Charges * Decision

			Final Decision		Total
			Release	Detain	
Total Number of Charges	1 to 3 Charges	Count	5	1	6
		% within Total Number of Charges	83.3%	16.7%	100.0%
	4 or More Charges	Count	11	5	16
		% within Total Number of Charges	68.8%	31.3%	100.0%
Total	Count		16	6	22
	% within Total Number of Charges		72.7%	27.3%	100.0%

Note: The sample size for this table is 22 rather than 25, given that 3 cases did not end in a decision during the observational period.

Table 4.3.2: Crosstab Total Charge Type * Decision

			Final Decision		Total
			Release	Detain	
Total Charge Type	Violent Offence	Count	12	5	17
		% within Total Charge Type	70.6%	29.4%	100.0%
	Other Offences ⁵⁵	Count	4	1	5
		% within Total Charge Type	80.0%	20.0%	100.0%
Total	Count		16	6	22
	% within Total Charge Type		72.7%	27.3%	100.0%

Note: The sample size for this table is 22 rather than 25, given that 3 cases did not end in a decision during the observational period.

⁵⁵ The label of 'Other Offences' includes property offences, administration of justice offences, and firearms offences.

Table 4.3.3: Crosstab Total Number of Violent Charges * Decision

			Final Decision		
			Release	Detain	Total
Total Violent Charges	0 to 1 Charges	Count	10	1	11
		% within Total Violent Charges	90.9%	9.1%	100.0%
	2 or More Charges	Count	6	5	11
		% within Total Violent Charges	54.5%	45.5%	100.0%
	Total	Count	16	6	22
		% within Total Violent Charges	72.7%	27.3%	100.0%

Note: The sample size for this table is 22 rather than 25, given that 3 cases did not end in a decision during the observational period.

In this sample, it is apparent that the total number of charges is correlated with the final decision of the hearing. Indeed, and as one might naturally assume, as the number of total charges increases, the likelihood of being released decreases. Specifically, those accused in this sample with 4 or more total charges (about 31%) were more likely than those with 3 or fewer total charges (just under 17%) to be detained.⁵⁶ Similarly, there also appears to be a relationship (albeit less pronounced) between the total charge type and the likelihood of release or detention. Table 4.3.2 shows that cases with property, administration of justice, or firearms offences as their most serious charge were more likely to be released (80%) than those with violent offences as their most serious charge (about 70%). As the purpose of bail is to determine the risk of reoffending or not appearing

⁵⁶ Note that the use of the word “total” in ‘total number of charges’, ‘total charge type’, and ‘total number of violent charges’ includes both current and outstanding charges.

in court prior to a trial, it is not surprising that violent charges were more likely than other offence types to be detained (although only slightly). However, recall that the secondary grounds were a justification for detention in 100% of the cases in this sample, indicating a predominant concern for risk of reoffending and/or to public safety. As such, it is somewhat surprising that the relationship between total charge type (specifically violent total versus other charge type), and likelihood of detention is not more pronounced. On the other hand, those with 2 or more violent charges were significantly more likely to be detained (about 45%) than accused with 1 or no violent charges (just over 9%). Indeed, it seems as though it is not the *presence* of violent charges that has the greatest influence on the possibility of detention, but the *number* of violent charges that correlates with this likelihood.

Additionally, while the details are not presented in the above tables, the outcomes of those cases in which the most serious charge was not of a violent nature warrant further description. Of note is Case 9, in which the accused had an administration of justice offence as the most serious charge and was released. The accused had a concealed weapon charge but also had a charge for failure to comply with a probation order (which is deemed by ACCS to be the most serious offence in the case). Comparatively, the accused in Case 8 had an administration of justice charge for 2 counts of failure to comply with a court order as his current charges (his outstanding charge was unknown) and was detained. However, the judicial officer detained this accused on the secondary grounds because of his violent criminal record and the failure of the accused to successfully complete treatment in the past. In accordance with the theme of risk in this sample, the accused in Case 8 was detained based on the perception of the individual's risk to public safety.

Within this same context, the relevance of firearms and domestic violence was mentioned earlier regarding current, outstanding and total charges. How both elements are treated in show

cause hearings also speaks to the greater theme of risk in the courtroom. The following tables present the findings for this sample regarding the relationship between firearms, domestic violence and likelihood of detention.

Table 4.3.4: Crosstab Firearms * Decision

			Final Decision		Total
			Release	Detain	
Firearms	No	Count	13	3	16
		% within Firearms	81.3%	18.8%	100.0%
	Yes	Count	2	2	4
		% within Firearms	50.0%	50.0%	100.0%
Total	Count		15	5	20
	% within Firearms		75.0%	25.0%	100.0%

Note: This table has a sample size of 20, as 3 cases did not end in a decision (as previously discussed) and there were also 2 other cases in which it was unknown whether there was a firearm involved. Of equal note, while it was previously mentioned that 6 cases had firearms-related offences, 2 of those 6 did not end in a decision. By extension, they were not included in the total count in this table.

Table 4.3.5: Crosstab Domestic Violence * Decision

			Final Decision		Total
			Release	Detain	
Domestic Violence	No	Count	11	5	16
		% within Domestic Violence	68.8%	31.3%	100.0%
	Yes	Count	5	1	6
		% within Domestic Violence	83.3%	16.7%	100.0%
Total	Count		16	6	22
	% within Domestic Violence		72.7%	27.3%	100.0%

Note: The sample size for this table is 22, because of the three cases that did not end in a decision.

Not surprisingly, cases in this sample without firearms-related offences were more likely to be released (about 81%) than cases with firearms-related offences (50%).⁵⁷ This coincides with the previous findings regarding the increase in the perception of risk and the decision to detain. Case 2 provides an illustrative example of a detention in which the accused was charged with a series of firearms offences, including (but not limited to) robbery with a firearm. This case had a reverse onus provision, as the offence of robbery with a firearm is listed under section 515(6)(a) of the *Criminal Code*. The judicial officer stated in their decision to detain the accused that although there were no concerns on the primary grounds, the secondary and tertiary grounds were of significant concern. Further, it was determined that the defence had not met their onus on these grounds. Yet, while Case 2 might indicate that accused with serious firearms charges are being rightfully detained based on the belief that serious charges equate to a “riskier” individual, Case 22 somewhat contradicts this notion. Indeed, this is an example of a case with firearms-related offences in which the accused was released. The accused was charged with armed robbery, aiding and abetting, and possession of stolen property. The accused was released on a recognizance without deposit as the judicial officer determined that the accused was no threat to the public, despite having committed a robbery with a firearm. Thus, two cases with serious firearms offences have different outcomes, perhaps suggesting that the presence of firearms is not a sole indicator of risk in this sample and, by extension, the decision to release or detain. Just as likely though, it also suggests that decision-makers may differ in their personal level of comfort in releasing accused and/or in their assessment of the degree of risk meriting detention.

⁵⁷ Note that “firearms-related” does not necessarily mean that the most serious offence was a firearms charge. Rather, it simply indicates that 1 or more of the charges in the case involved firearms.

Surprisingly, Table 4.3.5 shows that for this sample, cases *with* domestic violence were more likely (just over 83%) than cases without domestic violence (just under 69%) to be released. The one case involving domestic violence that ended in detention is Case 20. The accused was charged with assault, assault with a weapon, assault causing bodily harm, assaulting a peace officer, and 2 counts of failure to comply with a conditional release order. Evidently, this was a case involving very serious (violent) charges. One might note that as previously mentioned, an accumulation of violent charges increases the likelihood of detention in this sample (Table 4.3.3). The accused was detained, with the judicial officer citing the extensive and violent criminal record as justification to detain on the secondary grounds. However, this case seems to be an anomaly as domestic violence was associated with a greater likelihood of *release*.

To shed more light on this seemingly perplexing finding, take Case 1 as an example. The accused in this case was charged with a series of serious charges related to domestic violence, including sexual assault, aggravated assault, and forcible confinement. While the accused was released, the judicial officer handed down 15 conditions - the highest number of release conditions in the sample – including a “no contact” order. Similarly in Case 10, the accused was charged with assault and forcible confinement and was released. He faced only 4 release conditions, but one of which was a “no contact” order for his wife and all three of his children. Thus, although the presence of domestic violence is more closely associated with the likelihood of release, it seems as though the court remains vigilant of the risk these accused pose. This is especially so for the alleged victims of the violence, evident in the high number of conditions and use of the “no contact” condition. In sum, even when there are serious charges – domestic violence, in this case – the decision to release or detain an accused seemingly resides largely in the availability of sufficient conditions to adequately ensure the safety of the public.

Another case characteristic that is important to consider in the discussion of the final decision regarding release or detention is the presence of a criminal record. Tables 4.3.6 and 4.3.7 display the relationships between the presence of a criminal record as well as violence in the criminal record, and the decision to release or detain an accused for this sample.

Table 4.3.6: Crosstab Criminal Record * Decision

			Final Decision		Total
			Release	Detain	
Accused Criminal Record	No	Count	3	1	4
		% within Accused Criminal Record	75.0%	25.0%	100.0%
	Yes	Count	13	5	18
		% within Accused Criminal Record	72.2%	27.8%	100.0%
Total	Count		16	6	22
	% within Accused Criminal Record		72.7%	27.3%	100.0%

Note that Table 4.3.6 has a sample size of 22 because of the 3 cases that did not end in a decision. Also, the total number of those without a criminal record is 4 rather than 5, as 1 of the cases in which the accused had no criminal record represented 1 of the 3 cases that did not end in a decision (as discussed previously).

Table 4.3.7: Crosstab Violent Criminal Record * Decision

			Final Decision		Total
			Release	Detain	
Violence on the Criminal Record	No	Count	3	2	5
		% within Violence on the Criminal Record	60.0%	40.0%	100.0%
	Yes	Count	9	3	12
		% within Violence on the Criminal Record	75.0%	25.0%	100.0%
Total	Count		12	5	17
	% within Violence on the Criminal Record		70.6%	29.4%	100.0%

Note: this table has a sample size of 17 because 3 cases did not end in a decision; of those that did end with a decision, 4 did not have criminal records. Regarding the other one, it was unknown what offences were on the criminal record.

As Table 4.3.6 indicates, criminal record seemingly had little-to-no impact on the decision for this sample. Indeed, the difference is negligible, as an accused with no criminal record was only slightly more likely to be released (75%) than those with a criminal record (about 72%). This might be surprising to some given that criminal records are typically believed to be an important risk factor to consider in a courtroom. To shed additional light on this finding, Case 3 was the one detention case that did not have a criminal record in Table 4.3.6. The individual in Case 3 was charged with a number of firearms offences, as well as assault with a weapon, assault causing bodily harm, and failure to comply with a recognizance order. The accused in Case 3 did not have a criminal record but due to the severity of the offences and strong evidence to support the case, the individual was detained on the secondary grounds.

What is surprising is that the presence of violence in the criminal record was correlated with a greater likelihood for *release*. Table 4.3.7 shows that cases with a violent criminal history

seemed to be more likely (75%) than cases without this type of history (60%) to be released. However, recall that while cases with a violent classification for total charge were somewhat correlated with a higher likelihood of detention, it was the *number* of violent charges – and not simply the presence of violence – that significantly increased that likelihood. A similar phenomenon may be the case for violence on the criminal record. Take for example, 2 cases under study. In Case 22, the accused had a criminal record and was released. The accused was a female with current charges of possession of stolen property, aiding and abetting, and armed robbery. Her criminal record was not long, with the earliest conviction being in 2017,⁵⁸ but it indicated that she had a previous domestic violence conviction for assault with a weapon. She was released on a recognizance without deposit with 7 conditions, and the judicial officer cited that there was no risk or danger to the public and that she had a “short, minor criminal record”. Seemingly, the violent conviction on the criminal record in this case did not constitute a significant risk in the opinion of the judicial officer. One possible (or at least partial) explanation is that it is only 1 violent conviction.

In contrast, the accused in Case 20 had a criminal record and was detained. The accused had current charges of assault, assault with a weapon, assault causing bodily harm, assaulting a peace officer, and 2 counts of failure to comply with a conditional release order. The criminal record of the accused dated back to 1992 as the earliest conviction totalling 42 convictions, which included convictions for assaults and assaults causing bodily harm. The accused in Case 20 was detained on the secondary grounds because the judicial officer stated that the surety and plan of release were “insufficient” when accounting for the complex criminal record. As such, for this case, both the number and the severity of the convictions played a role in the accused’s detention.

⁵⁸ Case 22 was heard in 2018.

Seemingly, these findings support the theme already emerging from the data on total charges when it comes to violence, in that it is the *number* of violent convictions that might indicate a greater likelihood of detention, rather than simply the *presence* of violence on the criminal record.

An additional component of the criminal record that is important to consider in its relationship with the final decision are prior administration of justice convictions. Tables 4.3.8, 4.3.9 and 4.3.10 illustrate the relationships of the final decision across 3 types of administration of justice convictions (failure to comply with a release order; failure to comply with a probation order; and failure to appear in court) for this sample.

Table 4.3.8: Crosstab Failure to Comply Convictions * Decision

			Final Decision		Total
			Release	Detain	
Number of Failure to Comply Convictions	0 Convictions	Count	8	2	10
		% within Number of Failure to Comply Convictions	80.0%	20.0%	100.0%
	1 or More Convictions	Count	6	4	10
		% within Number of Failure to Comply Convictions	60.0%	40.0%	100.0%
Total	Count		14	6	20
	% within Number of Failure to Comply Convictions		70.0%	30.0%	100.0%

Note: the sample size is 20 because of the 3 cases that did not end in a decision, as well as 2 additional cases in which it was known that the accused had administration of justice convictions on their criminal record, but it was not known how many and/or what kinds of administration of justice offences they were.

Table 4.3.9: Crosstab Failure to Comply Probation Convictions * Decision

		Final Decision		Total	
		Release	Detain		
Number of Failure to Comply Probation Convictions	0 Convictions	Count	11	2	13
		% within Number of Failure to Comply Probation Convictions	84.6%	15.4%	100.0%
	1 or More Convictions	Count	3	4	7
		% within Number of Failure to Comply Probation Convictions	42.9%	57.1%	100.0%
Total		Count	14	6	20
		% within Number of Failure to Comply Probation Convictions	70.0%	30.0%	100.0%

Note: the sample size is 20 because of the 3 cases that did not end in a decision, as well as 2 additional cases in which it was known that the accused had administration of justice convictions on their criminal record, but it was not known how many and/or what kinds of administration of justice offences they were.

Table 4.3.10: Crosstab Failure to Appear Convictions * Decision

			Final Decision		Total
			Release	Detain	
Number of Failure to Appear Convictions	No Convictions	Count	12	3	15
		% within Number of Failure to Appear Convictions	80.0%	20.0%	100.0%
	1 or More Convictions	Count	2	3	5
		% within Number of Failure to Appear Convictions	40.0%	60.0%	100.0%
Total	Count		14	6	20
	% within Number of Failure to Appear Convictions		70.0%	30.0%	100.0%

Note: the sample size is 20 because of the 3 cases that did not end in a decision, as well as 2 additional cases in which it was known that the accused had administration of justice convictions on their criminal record, but it was not known how many and/or what kinds of administration of justice offences they were.

The findings from the preceding tables are not surprising, albeit important. Overall, it is clear that for this sample, administration of justice convictions of *any* kind were associated with a greater likelihood of being detained. Indeed, accused in this sample with 1 or more convictions for either a failure to comply with a release order, failure to comply with a probation order, or failure to appear, were more likely to be detained (40%, about 57%, and 60%, respectively) than those without these types of convictions on their criminal record (20%, about 15%, and 20%, respectively). This indicates that - generally speaking - for this sample, the court perceives convictions against the administration of justice as presumably a greater risk for reoffending, thus justifying the greater likelihood of detention.

Additionally, it is apparent from Table 4.3.11 (below) that cases in this sample with a Judge presiding (80%) were more likely to be released than cases with a Justice of the Peace (66.7%). This is important, as it is yet another consideration to reduce risk averse behaviour in show cause hearings. This seemingly confirms potential initial assumptions one might have that Justices of the Peace would be more likely to detain than Judges given the belief that the former tends to be stricter and more apt to behave “by the books” (potentially rooted in less legal training or a greater reliance on Crown positions) and thus, with an increased likelihood of greater scrutiny than Judges. Evidently in this sample, Justices of the Peace are seemingly more conservative with their decisions regarding potential risk, at least relative to their final decision. In contrast, gender of the accused was not strongly related to the final decision to release or detain an accused (Table 4.3.12).

Table 4.3.11: Crosstab Type of Judicial Authority * Decision

			Final Decision		Total
			Release	Detain	
Type of Judicial Officer	Justice of the Peace	Count	8	4	12
		% within Type of Judicial Officer	66.7%	33.3%	100.0%
	Judge	Count	8	2	10
		% within Type of Judicial Officer	80.0%	20.0%	100.0%
Total	Count		16	6	22
	% within Type of Judicial Officer		72.7%	27.3%	100.0%

Note: the sample size is 22 because 3 cases did not end in a decision.

Table 4.3.12: Crosstab Gender * Decision

			Final Decision		
			Release	Detain	Total
Accused Gender	Male	Count	13	5	18
		% within Accused Gender	72.2%	27.8%	100.0%
	Female	Count	3	1	4
		% within Accused Gender	75.0%	25.0%	100.0%
Total	Count		16	6	22
	% within Accused Gender		72.7%	27.3%	100.0%

Note: the sample size is 22 because 3 cases did not end in a decision.

Lastly, because 64% (16 cases) of the show cause hearings in this sample resulted in a release order, it is important to discuss the number and type of conditions handed down at bail in order to obtain a more complete picture of the outcomes in the hearings under study. The following table illustrates the distribution of conditions given across the cases in this sample.

Table 4.3.13: Number of Release Conditions

		Frequency	Percent
Valid	3 to 4 Conditions	4	25.0
	5 to 6 Conditions	2	12.5
	7 to 9 Conditions	7	43.75
	10 to 15 Conditions	3	18.75
	Total	16	100.0

Note: the sample size for this table is 16, as 6 hearings ended in a detention and thus do not have release conditions. Further, 3 hearings did not end in a decision and are thus not applicable.

The mean number of conditions handed down by the judicial officer was 7.56 (median=7). Of those released, just under 44% (7 cases) received between 7 and 9 release conditions. Interestingly, and somewhat surprisingly, almost 19% (3 cases) received 10 or more conditions, with the maximum being 15 release conditions (Case 1). It is also important to note whether there was a relationship between the number of release conditions that were given for bail orders and what kind of judicial officer was presiding. This is due to the difference between Justices of the Peace and Judges in terms of their duties and qualifications, and perhaps also their risk averse sensitivities, related to the finding above regarding their likelihood of release or detention. The following table sheds light on this question.

Table 4.3.14: Crosstab Judicial Officer * Number of Release Conditions

			Number of Conditions		Total
			1 to 5 Conditions	6 or More Conditions	
Type of Judicial Officer	Justice of the Peace	Count	3	5	8
		% within Type of Judicial Officer	37.5%	62.5%	100.0%
	Judge	Count	2	6	8
		% within Type of Judicial Officer	25.0%	75.0%	100.0%
Total	Count		5	11	16
	% within Type of Judicial Officer		31.3%	68.8%	100.0%

Note: the sample size for this table is 16, as 6 hearings ended in a detention and thus do not have release conditions. Further, 3 hearings did not end in a decision and are thus not applicable.

Perhaps unexpectedly, Table 4.3.14 suggests that of those released, a case in this sample being heard by a Judge was more likely (75%) than a case heard by a Justice of the Peace (roughly 62%) to result in 6 or more release conditions on the bail order. Thus, although cases with a Judge

presiding are less likely to result in a detention order, they are more likely to result in a substantial number of release conditions. This is a notable finding as it indicates that even when accused are released, risk remains a significant concern for the court, evident in the high number of release conditions, especially when handed down by a Judge.

When discussing the total number of release conditions given, it should be noted that when an accused is released to a Bail Verification and Supervision Program⁵⁹ - also known as “BVSPx4”-, they automatically receive the following 4 conditions (beyond any other conditions that each accused might be handed down): report to the program as frequently as directed by a bail supervisor; participate in rehabilitative services provided by the program; verify place of residence; and reside at that address (Mitchell, 2015). Of those released, just under 44% (7 cases) were released to the BVSP. This was a notable contribution to the high mean number of release conditions due to the four mandatory conditions associated with BVSP, subsequent to any additional conditions given by the judicial officer. Table 4.3.15 illustrates the distribution of the different release conditions for those cases in this sample that ended in a release order.

⁵⁹ Bail Verification and Supervision Programs are intended to provide a community-based option of supervision for accused at bail when they are at risk of being denied bail based on the primary grounds (non-appearance) or secondary grounds (risk to public safety) (Mitchell, 2015).

Table 4.3.15: Distribution of Release Conditions

<i>Condition:</i>	% of cases receiving condition	# of cases receiving condition
No Weapons	81.25%	13
No Go (Location)	68.75%	11
No Contact	68.75%	11
Reside at Address	62.5%	10
Notify Police Address Change	43.75%	7
BVSPx4	43.75%	7
No Drugs	37.5%	6
No Contact and Keep Distance	37.5%	6
Check-in with OPS	31.25%	5
Curfew	18.75%	3
Keep the Peace	18.75%	3
Community Programming	18.75%	3
Weapons Deposit	6.25%	1
No Trafficking Paraphernalia	6.25%	1

As illustrated in Table 4.3.15, the condition most often applied to the release orders was the “no weapons” condition (in just over 81% or 13 cases). This is not surprising given the prevalence of violent charges and the predominance of the secondary grounds in this sample which was referenced in 100% of the cases. While a mandatory condition of parole or probation orders, “keep

the peace and be of good behaviour” was handed down in just under 19% (3 cases) of the bail release orders in this sample. Consistent with the priority of public safety, it is not surprising that the second most common condition provided was either the “no go” (almost 69% or 11 cases) or “no contact” (almost 69% or 11 cases) conditions. Given that just over 81% (13 cases) of the release orders in this sample involved violent charges as the most serious offence, these release conditions were arguably to be expected.

According to the “ladder principle” codified in the *Criminal Code* and reiterated in *R v Antic* (2017), the greater the risk that the individual poses, the greater the restriction to their freedom reflected in their release conditions. “No contact” conditions are different from “no contact and keep distance” conditions, as the former restricts any kind of personal contact between the accused and whomever is the subject of the no contact order while the latter restricts contact as well as puts a physical restriction on how far away the accused must be from that individual at all times.⁶⁰ Almost 38% (6 cases) of release orders included the “no contact and keep distance” condition. For example, the accused in Case 11 was charged with fraud (redirecting mail), criminal harassment, and failure to comply with a no contact order. The accused was released on a recognizance without deposit with 7 conditions, including a no contact order for his wife, and a no contact and keep distance order of 200m relative to his daughter.

Interestingly, the “no alcohol” condition was not given in any of the release orders in this sample. This is interesting because in Case 7, the accused was charged with theft under \$5000 and 2 counts of failure to comply with a release order and was subsequently released on bail. A main subject of the discussion in the hearing revolved around the accused’s alcohol use, and how it

⁶⁰ Note that the figures presented in Table 4.3.15 for “no contact” and “no contact and keep distance” are mutually exclusive. That is, the “no contact and keep distance” conditions are separate and additional conditions to the “no contact” conditions.

impacted their alleged offending (the accused had allegedly stolen gin from an LCBO). While the judicial officer did inform the accused that they should “stop drinking”, they did not impose the no alcohol condition and, in fact, released the individual on an undertaking with only 3 conditions: reside at a specific location, no contact and “no go” to the LCBO from which he had allegedly stolen alcohol. Notably, the judicial officer suggested the no alcohol condition in this case, but the Crown stated that it was an unrealistic expectation of the accused.

Another interesting finding was that almost 19% (3 cases) of release orders included the condition of attending community programming. Illustratively, the accused in Case 24 – charged with robbery with a weapon, with outstanding charges of theft under \$5000 and 2 counts of fraud – received this condition. It was made clear in the hearing that the accused had a serious drug addiction. The judicial officer released the accused on a recognizance without deposit with 9 conditions, one of which being to attend a community health clinic within 3 days of release and to follow-up as necessary. Further, while only about 19% (3 cases) received the curfew condition, this is an interesting finding nonetheless. Indeed, the curfew condition is quite restrictive of the freedom of movement to a certain place at a certain time, and is especially important in the context of sureties and their role in ensuring the accused’s compliance with their conditions. To illustrate, Case 9 (in which the accused was released on a recognizance with deposit), received the curfew condition. The court noted that the accused had 2 sureties who, with the condition of a curfew for the accused from 10pm to 6am, had to know the whereabouts of the accused, especially between 7pm and 10pm. This time period was emphasized after the Crown expressed concern that the surety and the curfew were not enough “supervision” for the accused. The court also noted that the co-accused had been released that same day with similar conditions.

5 – DISCUSSION

This study has offered an in-depth and detailed account of what show cause hearings look like in one court in Canada, while at the same time portraying a troubling image of how court delay continues to persist in bail court despite numerous attempts by the *Supreme Court of Canada*, Senate reports and extensive academic scholarship to address it. This chapter will first discuss the types of cases requiring show cause hearings and whether they are in line with assumptions of what cases should go to show cause hearings versus other avenues (i.e., consent release etc.). Subsequently, the persistent issue of court delay will be discussed in the context of this research. This section will consider certain factors that contribute to the total length of a show cause hearing. These factors include recesses, wasted time, and the culture of adjournments as well as how these characteristics speak to the portrayal of bail hearings as becoming “mini-trials”. Following the discussion on court delay will be the necessary examination of how our current risk averse mentality has permeated the bail system within the context of show cause hearings specifically. This discussion includes a demonstration of how this research fits within the new penology, as well as a discussion of how release conditions have arguably become the new way to manage “risky” individuals released on bail. Finally, the “actuarial bail court” will be discussed.

5.1 - WHO GOES THERE? A LOOK INTO WHO APPEARS AT SHOW CAUSE HEARINGS

As this research provides a number of important details about show cause hearings in an attempt to evaluate the presence of court delay and risk aversion, it is necessary to provide an overview of what kinds of cases hold show cause hearings. Indeed, many bail cases do not require a show cause hearing. In fact, the majority of accused persons are simply released on a police release, or, subsequently, on a consent release such that very few cases actually require a show

cause hearing at all. As such, the characteristics of the accused and their charges can provide important contextual information regarding how specific factors of a bail case contribute to court delay, as well as *who* and *what* is considered “risky enough” to require a show cause hearing.⁶¹

Most of the accused in this sample attending show cause hearings were adult males. There were only three cases involving youth accused, and four cases with female accused. In just over half (13 cases) of the hearings, Indigenous identity was not discussed or determined and therefore was unknown. In the 12 cases that Indigeneity was determined, it was noted accordingly. From the cases for which it was determined, seven accused were non-Indigenous and five accused claimed Indigenous identity.

To determine the types of cases that appear at show cause hearings it is necessary to discuss both current and past charges. 64% of this sample had one or more current administration of justice charges, with one individual even facing six current administration of justice charges (Case 19). While 40% of this sample had no outstanding charges, 40% were facing three or more outstanding charges. In terms of the seriousness of the charges, 64% of the current charges were for violent offences, and 32% of the outstanding charges were for violent offences. Combining both current and outstanding offences, 80% of this sample had charges that were considered violent in nature. Of those 20 cases, eight cases were detained and 12 were released. Of the 12 released, almost all (11 cases) received the “no weapons” condition. It is suggestive from this breakdown that the secondary ground is being prioritized over the primary ground for detention, such that show cause hearings are reserved mainly for those with violent offences. This is, of course, contrary to the *Bail*

⁶¹ Detailed case descriptions can be found in Appendix A.

Reform Act (1972), which protects the presumption of innocence by prioritizing bail on the primary ground (i.e., risk of not appearing in court) (Doob & Webster, 2012).

Interestingly, six accused were facing current charges in which administration of justice offences were the most serious offence. This is surprising as one might assume that given the other criminal justice avenues available prior to a show cause hearing – in particular, police release or consent release - only accused facing violent charges would appear at show cause hearings. A more detailed examination is required as this research appears contrary to this assumption.

Case 12 involved an accused who had two current charges for failure to comply with a release order and had one outstanding violent charge: assault with a weapon. Of particular note in this case is that the supposed “failure to comply” occurred due to the accused not living at the address that was on file for the release order. However, it was discovered in this hearing - that lasted almost a full hour (i.e., 53 minutes) - that there had been a clerical error in the initial hearing for the violent outstanding charge in which the address of residence was written down incorrectly. As a result, the accused was technically in violation of the release order since he was not living at that address, nor had he ever been. Unsurprisingly, this show cause hearing was abandoned once this information came to light, but it leaves one to wonder how this case progressed all the way to a show cause hearing when this “breach” was entirely the fault of the court. Indeed, this error should have been identified and dealt with accordingly prior to a show cause hearing taking place.

Additionally, Cases 15 and 17 were facing current charges of failure to comply with a release order and had two and four outstanding charges respectively, in which the most serious was characterized as violent in nature. Case 19 describes an accused who was charged with being “unlawfully at large”, which is a breach of an intermittent sentence and classified as an administration of justice offence. This accused was facing three outstanding charges of which at

least one was determined to be violent. Thus, the commonality with accused who are appearing at a show cause hearing with the most serious charge being an administration of justice charge is that the outstanding charges included in the case are violent in nature. It seems then that the show cause hearing in these cases may be a type of “reassessment” of the initial release, in which the court determines whether the initial release was the correct decision based on new administration of justice charges. In fact, in Case 15 the judicial officer actually explains that the initial release of this accused was an error, and that the accused should have been detained on their outstanding charges because they are “unsupervisable” in the community and will not refrain from offending while on bail.

While it may be understandable that violent charges dominate show cause hearings, they are not the only type of charge to appear. In this study, and as previously mentioned, while 80% of the total charge type⁶² was characterized as violent in nature, 20% was not. For two accused, property offences characterized their total charge type while two other accused faced administration of justice offences as their most serious charge, and one accused had a firearms offence⁶³ as their most serious charge. Of these five cases dealing with non-violent charges, four were released and one was detained on the secondary grounds (Case 8). While the accused in Case 8 was detained, the charges were non-violent in nature, leaving one to wonder why an accused with non-violent charges (as the most serious type of offence) would be such a threat to the public that a detention order was necessary.

⁶² Total charge type refers to the most serious charge with which the accused has been charged, whether it is a current or outstanding charge.

⁶³ This firearms offence was not considered to be a violent offence because the charges were for unauthorized possession of a firearm and unauthorized possession of a firearm for a purpose, with no act having been committed with the firearm. Thus, it is a non-violent offence and classified separately.

With respect to these cases, the releases are of particular interest as they provide an overview of what the outcome of show cause hearings can be for accused with non-violent charges who are not detained. Case 5 describes an accused who had three total charges, which were all related to the possession of firearms, and who was released with six bail conditions. The accused had a criminal record that was non-violent in nature, with the last conviction having been in 1988. The imposed conditions included BVSPx4, no weapons and a restriction from a certain location (“no go”). While the no weapons condition is seemingly understandable given the nature of the alleged offence, the defence argued in this case that the “no go” and BVSP conditions were not necessary as the accused posed no actual threat to society. However, this argument was overridden by the Crown and accepted by the judicial officer, who stated that they would even prefer a surety as well. Placing so many conditions on an accused, including a supervision program, who poses a low risk to public safety is seemingly indicative of the reliance that judicial officers have on supervision programs to manage an accused who could be otherwise released on their own recognizance (Deshman & Myers, 2014).

Case 6 deals with an accused who had two total charges of arson which were classified as property offences and was released with nine bail conditions. These included - but were not limited to - BVSPx4, notification of address change, curfew, and “no go”. It should be noted that the accused had a prior criminal record with at least one violent conviction. Once again, non-violent charges are being met with seemingly excessive bail conditions that appear to indicate an obsession with controlling potentially “risky” individuals and limiting freedoms of legally innocent people. Nine release conditions for two non-violent charges could be considered unjustifiably onerous and punitive, which would arguably be in violation of the ladder principle codified in law which calls for the least restrictive conditions necessary (Department of Justice Canada, 2023).

In some contrast to the previous cases discussed, Case 7 was an accused who was charged with a total of six offences and received the following conditions: reside at a specific location only, restriction from a certain location, and no contact. The accused did not have a criminal record. Given that the current charges included theft under \$5000 from an LCBO, the release conditions can be considered justifiable, and thus, contrasts with the previous cases with seemingly unreasonable conditions. It is important to note that the accused in this case was an Indigenous individual. While this decision perhaps reflects judicial attempts to address increasing concerns with vulnerable populations incarcerated on remand (Rogin, 2017) experiencing the harsh conditions of remand custody (Perrin, 2019), it is important to still note that the persistent increase in the incarceration of Indigenous people illustrates that this problem is ongoing.

Additionally, Case 9 dealt with an accused who had a total of four charges, with an administration of justice charge as the most serious charge. The accused had a criminal record, but the nature of which was not presented in the hearing and is therefore unknown. This accused was released with seven bail conditions, including no weapons, no drugs, no drug paraphernalia, curfew, “no go”, no contact, and no contact with a distance limit. Case 9 is of particular interest for this discussion for two reasons: it is a case with administration of justice charges as the most serious offence and has a seemingly excessive number and types of conditions attached to the release. For context, the accused faced the following charges: possession of marijuana, possession of proceeds from crime, possession of a concealed weapon, and failure to comply with a probation order. While the weapons and drug-related conditions might be considered reasonable for this release, the “no go” and “no contact” orders are seemingly excessive in their attempt to control the liberty of the accused while on bail (particularly given that the most serious charge was an administration of justice offence). Evidently, the risk averse mentality of the courts appears to be

widening the net of those who appear in show cause hearings, such that non-violent charges are being dealt with through mechanisms that should be limited to those accused who constitute a significant threat to society if released. Although the majority of the non-violent cases resulted in a release order, the number and type of conditions may be argued – in many cases - to be excessive and unjustifiable based on the seriousness of the offence.

5.2 - COURT DELAY AT BAIL

To begin, the subject of court delay cannot be discussed without a consideration of the total length of bail hearings. As previously mentioned, the average length of show cause hearings in this study was about two and a half hours (150.68 minutes). Four cases in this sample exceeded three hours in total length, while three cases exceeded more than one day of court time. The purpose of bail court is to determine whether an accused should be detained or released while awaiting trial, and bail has historically been intended as a brief procedure of 1-2 appearances at most and which focuses primarily on the primary grounds (Webster, Sprott, Doob & Mitchell, 2016). Due to this historical intention of the bail process, and given that bail processes generally are scheduled for 1.5 hour time slots (Wyant, 2016), court delay is evident in this sample to some degree.

While a number of factors contribute to the total length of the show cause hearing, including opening and closing statements, the questioning of witnesses and whether judicial officers also question witnesses, a few are of particular interest in the context of addressing delay in the bail process. The presence and length of breaks and recesses, wasted time in the form of “time waiting”, and lengthy decision announcements might all been seen to contribute unnecessarily to lengthy show cause hearings and should be addressed.

5.2.1 – Breaks and Recesses

One potentially significant factor contributing to lengthy court processing time in the bail process is that of breaks and recesses in the operational court time. In almost half (48% or 12 cases) of the show cause hearings in this sample, the judge or justice of the peace called for a “decision break” which essentially was a break in the hearing for the judicial officer to consider the facts presented and make their decision. A break to determine the final outcome of the case may arguably be justifiable, assuming that it does not become so long (or so frequent) as to constitute unreasonable delay. Of those cases which had a break for the decision, half had this decision break coincide with the lunch period, which largely ensures that it does not take up any/much active court time. As such, the average time spent on a break for the decision was 84.75 minutes (median=71.5).⁶⁴ While the amount of time spent during the break on the decision versus on lunch could not be reported and is therefore unknown, it is notable that the average length of the hearings – when breaks and recesses are excluded – is almost a full hour shorter than the average length including breaks and recesses, at approximately 91 minutes. Myers (2015) found that while the court was open and operational for an average of just under 6 hours a day, 2 and a half hours of that time was “dead time” in which either the court called for a recess, or court was operational and in session, but no business was being dealt with in open court. A similar problem may be occurring in show cause hearings.

Just as importantly though, it does not appear to be the only concern related to court delay. In Myers’ (2015) study, she notes that the court was sitting for less than 6 hours a day despite the fact that court is scheduled for 8 hours (from 9am to 5pm). A parallel concern may be found within

⁶⁴ This average is based on 12 cases, since 13 did not take decision breaks.

the limited context of show cause hearings. Specifically, the judicial officer in Case 4 announced that they do not accept any hearings past 2pm, including consent releases. Even with a required lunch break, court time is seemingly being under-utilized. It may be important to note here that an additional cost to the under-utilization of court time is the fact that all of the actors in court are being paid by the province, in which case unreasonable breaks and recesses are also having an impact on financial considerations for the provinces.

Just as relevant, Case 15 had a decision break that amounted to just under 6 hours (331 minutes), being the maximum of this measure in this sample. While Case 15 could be considered an exceptional case for a number of reasons, it is still necessary to discuss the potential reasons for such substantial amounts of court time being spent in this manner. Indeed, Case 15 was a youth accused who faced current charges of two counts of failure to comply with a bail order, with outstanding charges including manslaughter and aggravated assault. The accused had a criminal record which consisted of various theft charges and failure to appear convictions. In this case, an astonishing five witnesses were called to the stand to give testimonies within the context of a show cause hearing.

Perhaps not surprisingly, Case 15 was heard over three consecutive days, in which the closing statements eventually amounted to 114 minutes. More relevant to the current discussion, the decision break - in combination with the lunch breaks from all three days - spanned 331 minutes, while a further 119 minutes were used for “other breaks/recesses”, and 371 minutes were used to question the five witnesses in this case. While it might be reasonable for a bail hearing that is considering the release of an accused initially charged with manslaughter to take longer than the average case, one might legitimately question whether it should extend - in the interests of court efficiency - to almost 17 hours of court time over three days.

While decision breaks – despite accounting for a large portion of time in this sample – may be argued to be necessary in order to allow for proper consideration of the evidence, other breaks and recesses were also noted. 32% of the show cause hearings in this sample had recesses for reasons other than the decision. The average length of these recesses was just over 30 minutes (median=15 minutes), with the maximum being once again found in Case 15 in which they took almost two hours. While these recesses took place across three days, almost two hours of recesses may be considered to be excessive.

Yet, one might be tempted to argue that some recesses may be necessary and justifiable in order to provide relief for witnesses or family members, or to advance the case. For example, in Case 7, a recess was taken in order to call shelters for accommodations for the accused if released. Still, this matter could presumably have been resolved prior to the hearing. Equally important, some less justifiable reasons were given for the recesses in some cases. In Case 5, the reason for a break was that there was not enough time to hear from the witness since another (polycom) hearing was scheduled for 15 minutes after the opening statements ended. It should be noted that the polycom hearing referred to in this case was late to start, and the witness testimony ended up only lasting 16 minutes. While judicial officers cannot be expected to predict the future, perhaps more careful consideration of scheduling could have avoided the delay in this case.

Similarly, in some cases such as Case 1, the judicial officer simply decided to take a recess between witnesses with no reason given, nor any obvious explanation apparent. While this does not necessarily mean that there was not, in fact, a justifiable explanation, one must also recall that justice must also be seen to be done. More problematically, one might also think of the recess of 15 minutes in Case 22 that was taken during the hearing because the judge received an unrelated phone call. While emergencies happen occasionally, breaks and recesses are evidently taking up a

significant proportion of operational court time. Further, this unrelated phone call in Case 22 also contributed to 17 minutes of time waiting. Particularly given that they increase the length of a show cause hearing and, by extension, potentially contribute to the remand population in the case that the show cause hearing exceeds 1 day, any accumulation of time spent on breaks/recesses should be carefully monitored and justified. Indeed, accused must wait longer periods of time to receive their “pre-trial liberty” (Myers, 2015).

5.2.2 – Wasted Time

In many *Supreme Court of Canada* cases, the topic of institutional delays was a frequent theme (*R. v. Askov*, 1990; *R. v. Jordan*, 2016; *R. v. Morin*, 1992). The common conclusion or focus was that institutional delays should be limited as much as possible, and at some point, become unacceptable and intolerable. Yet, institutional delays characterized by wasted active court time or “dead time” continue to be a problem within the context of show cause hearings, contributing to unacceptable types of court delay. In this study, this factor of court delay was labelled “Active Court Time Waiting”, or for short, time waiting. This variable was created to capture the time spent in court when it was in session, but was not actively used to progress a case.

For the show cause hearings studied in this sample, 14 cases experienced time waiting, with the average time spent “waiting” being just over seven minutes per case. While seven minutes per case may not be considered to be excessive, any delay caused by the court rooted simply in not using available time may arguably be seen as unreasonable and, by extension, constitute unacceptable institutional delay. Similarly, Webster (2009) argued that although time waiting in video remand court took up only 9 minutes per day (on average), any reduction in this amount of

time represented a significant contributor to more efficient case processing.⁶⁵ In fact, one of the most effective means of reducing wait time in video remand court was to eliminate the relocation of the accused from the correctional facility to the courthouse (in order to appear in person) (Webster, 2009).

A similar approach is likely to have equal benefits for show cause hearings. And the qualitative information from this research seemingly bears out this assumption. Specifically, 12 of the 14 cases that experienced time waiting referred to waiting for the accused to be relocated from the cells to the courtroom (among other factors). Other factors identified as contributing to time waiting in this sample include waiting for calls to be made, waiting for sureties, prosecutors, defence counsel, or clerks to appear, and waiting for Crown and Defence to complete conversations related to the hearing. While some of these factors almost certainly advance the case in some way, one might nevertheless consider them to be unreasonable and unnecessary institutional delay that could be addressed with better scheduling and resolution of calls or conversations related (or not) to the case outside of court time.

Another aspect of the show cause hearings in this sample that arguably contribute to wasted time and thus the persistent issue of lengthy case processing is the delay in decision making, particularly the time spent in presenting the decision itself. The average amount of time that was spent just announcing the decision in this sample was over 13 minutes (median=9). Qualitative data for this sample indicate that a large portion of the decision time was spent reiterating the facts of the case that had already been presented during the hearing. While the repetition of *some* information in the decision may be necessary or desirable within the context of justice being seen

⁶⁵ For a discussion of the various factors proposed to bring about this reduction, see Webster, 2009.

to be (or understood to be) done, it is equally possible that at least in certain cases, the repetition of almost all the information heard in the hearing is unnecessary or counterproductive to other concerns (e.g., court delay).

As a notable example, the presentation of the decision in Case 15 lasted 50 minutes. However, as the case spanned three consecutive days and heard from five witnesses, a significant amount of information was presented in this hearing which could potentially necessitate the repetition of some of the most important information. However, for most cases that did not span more than one day, nor hear from more than one or two witnesses, this kind of repetition may be unnecessary to go over again in a bail hearing, particularly when the show cause hearing was conducted on the same day in which the decision was given. Indeed, as all the same individuals have presumably been present during the entire hearing, there may be no real need (or at least sufficient “value added”) to justify the reiteration of these known details.

5.2.3 – Delayed Decision Making and the Culture of Adjournment

The above sections on delay have pointed toward an embedded culture of delay that has already been identified as present within the bail process more generally. The culture of Canadian courts has been characterized as both a “culture of adjournments” (Myers, 2015) and a “culture of complacency” (Runciman & Baker, 2017). While court delay needs to be addressed and resolved such that bail hearings are more efficient and result in speedy resolutions,

the ability to immediately proceed with a case and process it without interruption or delay is a necessary – but not sufficient – condition for bail court efficiency. Specifically, this efficiency in court operations doesn’t necessarily guarantee the effective resolution of the case (Webster, 2009, p. 110).

The potential result of increased pressures on the justice system to resolve delay is to resolve the daily docket faster, but that does not necessarily mean that the cases themselves are resolved faster. A high number of adjournments is indicative of an ineffective and unprepared courtroom, significantly contributing to the issue of court delay in Canada.

In fact, this culture of complacency in the decision-making process as well as in the recourse to adjournments are seemingly ingrained in the bail courts under study when looking at the totality of delay in show cause hearings in combination with the results of those hearings. The average length of time for the presentation of the final decision was over 13 minutes. Shockingly, four cases in this sample had a decision time of over 21 minutes, with the maximum taking 50 minutes (case 15). Specific notes taken of the decisions indicate that a portion of the decision is spent reiterating the facts of the alleged offence and providing an overview of the hearing. As one might expect, little time related to the decision was spent actually presenting the decision and the conditions for a release order, if applicable.

While most cases in this sample did end in a decision, six cases had the hearing span more than one day, often because the decision itself was adjourned until the next day. It is particularly concerning that judges and justices of the peace feel the need to delay a decision to the following day, especially when the reasoning for doing so is unclear and often left without justification. Interestingly, Case 13 exceeded 2 days and still ended with no decision within the data collection period. This case extended from 10:46am to 3:39pm on the first day and resumed 2.5 weeks later at 10:17am. At 12:10pm of the second day, the judicial officer stated that they were “not prepared” to give a decision that day, and that the decision would be rescheduled for a date the following week. This was the only justification provided for adjourning this hearing to another day a week

later. Particularly given that the accused was in custody, this extended period emerges as particularly problematic on various levels.

5.3 – RISK AVERSION IN SHOW CAUSE HEARINGS

5.3.1 – The “New Penology” at Bail

As previously mentioned, the “new penology” is a product of neoliberalism and a change in how the justice system is viewed and used. Feeley & Simon (1992) describe the new penology through three transformations of the justice system: first, discourse focused on diagnosis and retribution is replaced by a discourse of risk and probability; second, goals of rehabilitation and the reduction of recidivism are afforded less importance in favour of new objectives such as the efficient control of the justice system; and third, the more traditional techniques that foster individualization and equity are replaced by techniques that target offenders as a whole group. These transformations also appear to be indicative of the fact that the new penology is also taking hold at the bail stage in Canada.

The first transformation - the replacement of diagnosis and retribution with risk and probability at the forefront of criminal justice - is evident in the way in which the bail process - which is an almost exclusive tool for assessing and managing risk in the justice system – is being increasingly used over other available policies and practices in the justice system. Indeed, more and more cases are beginning the criminal court process in bail. Recall that while 41% of all Ontario criminal cases in 2013/2014 began in bail court, this figure rose to 45% in 2019 (Webster, 2023a).

This increasing focus on the control of accused persons is also manifest in show cause hearings. Indeed, one notes a particular focus on the presence and composition of a criminal record

(as a significant risk factor to public safety), the nature of the alleged offence, and the availability of an acceptable surety that will assume the risk (and its management) outside the courtroom. In this sample, of the six accused who were detained, only one did not have a criminal record. Of those five accused who had a criminal record and were detained, three had a criminal record that consisted of at least one violent offence. Additionally, the overall charge type – which includes current and outstanding charges – was characterized as violent in nature for 20 out of the 25 cases. Finally, in five out of the 16 release orders in this sample, a surety was included in the order. In fact, two sureties were required in Case 9, seemingly indicating a much greater concern for offending on bail than in other cases with only one surety.

Coupled with the increased number of accused persons beginning the criminal process in bail, this concentrated preoccupation with criminal record, violent charges, and sureties as a central focus of the show cause hearings in this research arguably reflects the prioritization of risk and probability of offending. While one might argue – correctly – that the primary purpose of bail is still to assess risk and the probability of offending, the change that has been seen over the last several decades is a much greater focus on control. That is, risk is now being increasingly managed through hard (rather than soft) mechanisms of state intervention. In this way, one might argue that the bail process (which has historically been understood as the exception to police release) is taking on an ever-increasing role as the mechanism – par excellence – of risk reduction.

The second transformation - the change in objectives in which efficiency is prioritized over rehabilitation and the reduction of recidivism - is apparent in the conditions being applied for release orders at the bail stage. It is important to note here that efforts focused on rehabilitation and reducing recidivism are typically targeted at “offenders” – that is, those who have been convicted and sentenced. Accused facing a bail hearing are different as they have not yet been

found guilty. As such, strategies for rehabilitation and the reduction of recidivism should not be applied to them.

However, the prioritization of efficient control is also apparent with those yet to be found guilty but who are released into the community until trial. Control is extended into the community, seen most notably in the sheer number of release conditions being handed down - often unrelated to the charges. One need only recall the average of seven conditions being handed down for bail orders in the current sample, with a maximum of 15 for one case. A high number of release conditions is indicative of the priority given to the efficient control of (presumed) “offenders” in the justice system because release conditions, as well as the requirement of a surety, are the primary ways in which the justice system keeps effective control over “risky” individuals, without detaining them. In addition to the number of conditions, the requirement of a surety is another problematic feature of this elevated concern with efficient control. Indeed, sureties have become “civilian jailers” (Schumann, 2018) or “quasi-police” (Myers, 2009), as the courts are tasking the community with the responsibility of ensuring the accused does not pose a risk to society on bail.

Likewise, the third transformation is described as the replacement of old techniques of individualization and equity by new techniques of targeting whole groups of “offenders”. This is evident in the increasing importance placed on the managerial aspect of the justice system (Simon, 2006). While accused at bail are not yet “offenders”, this phenomenon is still seen in the apparent overcharging that has taken place, involving more people at the bail stage than ever before. It seems that accused – as a group - are presumed risky until proven otherwise. Accounting for both current and outstanding charges, almost half (12) of the accused in this sample were facing five or more charges. The average number of charges in this sample was just over seven. Due to the shift in focus from punishment to managing the risk of “dangerous” groups, charging individuals with

a higher number of offences in order to increase their likelihood of being managed by the courts in some way has become a serious problem (Simon, 2006; Webster, Doob, & Myers, 2009).

Similarly, the increasing recourse to conditions also reflects this same goal. On the one hand, the sheer number of release conditions being handed down – often described as excessive in nature - are supportive of the overarching goal of managing potentially risky people as a whole. On the other hand, these release conditions are often also unrelated to the charges, reflecting the targeting of all accused as potentially dangerous. Similarly, the types of conditions being handed down are much more supportive of the overarching goal of the wholesale management of potentially risky people as a whole rather than the selective use of conditions to address specific individualized needs. Taken together, it appears that a new process is emerging, characterized by a denial of any attempt to limit or individualize conditions, thus translating into excessive management and control by the courts by entire groups deemed to be “risky”.

But the point can be extended even further, as there has also been a growing overrepresentation of certain groups being held for a bail hearing. Indigenous people immediately come to mind, further illustrating the move away from individualized techniques in favour of targeting whole groups of people. Indigenous people are more frequently detained on remand (versus released on bail awaiting trial) than their non-Indigenous counterparts (Robinson, Small, Chen, & Irving, 2023). More specifically, the rate of Indigenous people in remand in 2017/2018 was almost 900% higher than the non-Indigenous remand rate in the same year (Webster, 2023a). Likewise, people with mental health issues are reportedly less likely to be released on bail (Webster, 2023b). A significant potential reason for their increasing overrepresentation in the justice system is due to other disadvantages that accompany their mental health problems, such as substance abuse and homelessness (Webster, 2023b).

5.3.2 – The Risk Averse Culture of Bail Courts

Parallel to the findings from the literature review regarding the increasing concern surrounding risk in the criminal justice system, the bail court under study has seemingly also adopted this actuarial role. Indeed, the justice system has – in some respects – moved beyond the goal of punishing guilty individuals who have broken the law, towards the new goal of managing “dangerous”, potentially legally innocent, groups (Feeley & Simon, 1992). This risk-averse culture of bail courts has led to “a generalized incentive to avoid – as long as possible – releasing anyone with more than a non-trivial likelihood of committing a crime” (Doob & Webster, 2012, p. 47). This same phenomenon can be seen in the grounds of detention used in the show cause hearings under study. While the primary grounds refer to whether the accused will appear in court for their criminal case, these grounds were not referenced – on their own - in any show cause hearings in this sample. When combined with secondary and tertiary grounds, primary grounds were only referenced in a total of seven hearings. Secondary grounds pertain to the likelihood of the accused committing an(other) offence while in the community, and therefore possibly putting the public at risk upon their release. As secondary grounds were referenced in 100% of the hearings in this sample, it is evident that the risk of offending while on bail is a primary concern for the court across both years sampled.

However, the risk of offending is not necessarily the only measure of risk calculated in bail court. As discussed previously, it has been argued that there is also a concern with risk to one’s reputation (Myers, 2009). Specifically, in the case of a release, the judicial officer risks public safety if the accused offends, which subsequently could result in public criticism of the judicial officer (Doob & Webster, 2012). At the same time, the potential benefits to the judicial officer who chooses to detain the accused person are typically multiple in nature: the absence of any public

criticism, the absence of risk to public safety, and the avoidance of subsequent offences (Doob & Webster, 2012). As such, it is logical to assume that court actors may indeed be more conservative with their decisions regarding both the final outcome of release or detention and if released, the conditions that are applied.

Having said this, and while this is a fair assumption, it might appear in this sample that at least on the basis of the final outcome, risk to reputation might not have been a primary concern for the judicial officers. Indeed, only six cases in this sample resulted in detention. While one might argue that the detention of slightly less than 25% of the sample indicates that risk to one's reputation is seemingly not a concern of judicial officers, it is worthwhile to remember that detention at the bail stage should be the exception (McLellan, 2009; *R. v. Antic*, 2017). While the norm in this sample is to release, the fact that almost 25% of the sample was detained is arguably more than an exception. While Case 15 can certainly be considered an exceptional case warranting detention due to the seriousness of the outstanding charge (manslaughter), it is hard to argue that an additional five out of 25 cases were also exceptional (and, by extension, justified a detention order).

Additionally, the number of release conditions also indicates the concern about risk and reputation of the judicial officers. The mean number of release conditions handed down by judicial officers in this sample was approximately seven. Some might argue that, on the basis of risk assessment and risk aversion, seven release conditions constitutes a reasonable number. However, on the basis of the presumption of innocence which is a pillar of the justice system according to the *Charter* (and reaffirmed in *R. v. Antic*, 2017), one might argue that seven release conditions are particularly onerous and unreasonable, especially if some of those conditions are unrelated to the alleged offence(s). For example, in Case 1, the accused was released with 15 conditions,

including one for no drug use or possession, when the alleged offences were not related to drugs. Likewise, the curfew condition – as primarily one of control - was applied in three cases in this sample and is not seemingly related – at least directly - to the alleged offences such as arson (Case 6), possession of marijuana, proceeds of crime and a firearm (Case 9), and criminal harassment and fraud (Case 11). Importantly, this need to restrict the movement of the accused through the curfew condition is unrelated to the actual charges laid. As release conditions are a mechanism of control over “risky” individuals outside of the courtroom (Myers, 2017), it is reasonable to argue that while judicial officers are granting bail more often than not, the scope of the release conditions illustrates a significant concern of risk to the community.

5.3.3— Bail Conditions: Prevention or Punishment?

The seemingly excessive use of conditions in release orders also reflects the risk averse mentality adopted by the courts. Both legal and academic arguments have been made stating that bail conditions should be approached with restraint, such that as few conditions as possible should be applied and in the least onerous way (John Howard Society of Ontario, 2013; *R. v. Antic*, 2017; Runciman & Baker, 2017; Wyant, 2016). However, it seems that in the years immediately following the decision of *R v Antic* (2017) by the *Supreme Court*, the Ottawa bail courts have largely failed to translate this mandate in practice. Indeed, as mentioned in the results chapter, the mean number of release conditions handed down for this sample was 7.56 (median=7).

This is concerning, given that a high number of release conditions increases the likelihood of overburdening the accused, generally setting them up to fail while on their so-called “release”. The greater the number of conditions, the greater the chance of a breach, particularly given the lengthy delays in resolving cases. Multiple conditions can also contribute to bail court delay

because breaches result in additional court appearances, translating into further delay. This is problematic because the administration of justice charges (e.g., failure to comply with release order) are taking more court time. To this end, judicial referral hearings were introduced to the *Criminal Code* in 2019 under Bill C-75 as a potential (partial) solution to delay by acting as an alternative response to bail hearings for accused charged with breaching release conditions (Berger, Myers & Deshman, 2024). Unfortunately, since the introduction of these hearings they have been largely under-utilized, thus, their goal has not yet been realized. During the first two years following its inclusion in the *Criminal Code*, judicial referral hearings were used a total of four times in Ottawa (Spratt & Richards, 2021). For a practice that has the potential to resolve at least some delay in the bail process, it is concerning that they have been utilized so little.

In their study on bail conditions and youth offenders, Sprott and Myers (2019) explained that even though in principle, youth offenders should be given as few conditions as possible to prevent offending, they are still released with onerous conditions unrelated to their individual risk of offending on bail. This is also the case with adult offenders as it pertains to the sample under study, as an average of roughly seven release conditions per released offender appears excessive. In addition to the number of conditions, the fact that many are unrelated to the alleged offence(s) risks overburdening the accused. This can contribute to a greater likelihood of committing a “failure to comply” offence, which would almost certainly result in the accused being brought back to bail court as a result of having been charged with an offence against the administration of justice. As one might recall, the reappearance of an accused in bail court due to the breach of unrealistic conditions is disconcerting as these matters are generally minor in nature and pose a significant threat to any attempts to reduce court delay (Runciman & Baker, 2017).

Also notable is that 16 (64%) of the cases involved current charges for administration of justice offences. The prevalence of these types of charges is well over half of the sample points to the prominence of concerns about “risk” in the criminal justice system and that of society overall. While bail court does not use actuarial tools to determine the riskiness of the accused, risk is still a calculation that is made in bail court, illustrated by the number of administration of justice charges present in the sample of show cause hearings. The application of particularly excessive, unrelated, and unnecessary release conditions is applied to control “risky” individuals without detaining them. When an accused appears back in court for a breach of conditions and/or other offences while already on bail, the perception of risk increases. Likewise, the number of administration of justice offences of which the accused in this sample had already been convicted is surprising. Indeed, almost 70% (17 cases) of the cases in this sample had administration of justice convictions on their criminal record. It is important to note the number of administration of justice convictions because any violent offences on the criminal record would otherwise hide the number of convictions for administration of justice offences. This is because cases in the current analyses are labelled by the most serious offence such that less serious offences, whether current, outstanding, or on the criminal record, are largely hidden by the classification.

Moreover, the imposition of such high numbers of conditions on released accused is almost certainly contributing to the high number of administration of justice convictions that accused have on their criminal record. It has been reported that cases processed in the Ottawa courthouse have the greatest number of administration of justice charges across the province (Wyant, 2016). In this sample, the overwhelming majority (85%) of accused who had a criminal record had convictions for administration of justice offences. Importantly, the harsh treatment of administration of justice offences is not consistent with the high priority placed on public safety. When an accused breaches

a condition of release - especially one that is unrelated to their initial charge or not considered, under normal circumstances, to be a criminal offence (e.g., returning home past their curfew) - public safety is hardly at risk. If the concern is to truly protect the public from risk, then the focus should be on violent charges, not administration of justice charges.

In addition, these less serious offences may be plaguing the justice system and causing more problems for the individuals who are dealing with them than they are supposedly resolving. Not only do these minor offences contribute to the remand population unnecessarily, due to the fact that the release conditions for which they have breached are often unrelated to the alleged offence at the outset, but they also increase the assumption of risk of the accused in subsequent bail hearings and trials. Indeed, the greater the number of administration of justice convictions, the greater the belief that the accused will breach release conditions in the future, resulting in a greater likelihood of detention (or, at a minimum, a greater number of conditions imposed). Consequently, detention at the bail stage itself increases the perception of the individual's risk to the public at trial, which can negatively impact the final outcome (Koza & Doob, 1975). Specifically, detention at the bail stage has been found to be an aggravating factor at sentencing, which not only increases the likelihood of a custodial sentence vs. community sentence, but also increases the likelihood of a longer custodial sentence (Oleson et al., 2017; St. Louis 2022; Williams, 2016).

While the number of conditions that are assigned to bail releases in this study is undoubtedly concerning, the types of conditions must also be considered. Release conditions, while meant to control the accused to some degree while awaiting trial in the community, are oftentimes unrealistic (Runciman & Baker, 2017). For example, giving an alcoholic the condition of no alcohol consumption will almost certainly result in an additional administration of justice charge for that accused. Likewise, a no weapons condition that is unrelated to a charge that is non-

violent in nature (i.e., theft under \$5000) (Case 24), simply creates the opportunity for an administration of justice charge to occur where it may not have been otherwise. Similarly, when an accused receives a bail condition on their release order that is unrelated to the charge, and thus the *alleged* offence, conditions become onerous and thus, may aptly be considered a pre-trial punishment (Sprott & Myers, 2011). For example, in Case 11, the accused faced charges of failure to comply with a no contact order, fraud, and two counts of criminal harassment. The accused was released with seven bail conditions, which included the following: reside at a specific address, notification of address change, no weapons, no go, no contact, no contact with distance limit, and curfew. While several of these conditions are seemingly logical when considering the charges, such as no go and no contact that is in relation to the alleged offence(s), other conditions are seemingly unrelated to the charges. Indeed, there were no weapons involved in the original charges and yet a no weapons condition is applied in the release order. Likewise, a curfew condition could be considered to be a “catch all” condition in this case, considering the charges that the accused faced. “Catch all” conditions are vague by nature, such that they can be used to control a wide range of behaviours that law enforcement agents deem to be inconsistent with law abiding behaviour while on bail. As “bail conditions generally criminalize behaviour that is not otherwise prohibited under the *Criminal Code*” (Deshman & Myers, 2014, p. 65), “catch all” conditions are an easy way to manage an umbrella of behaviours that are otherwise not criminal, such as arriving home past midnight. Evidently, these types of charges act as a management strategy for “risky” people such that they are increasingly controlled by the justice system. Not only do they widen the net of the justice system by contributing to higher rates of offending through breaches of conditions, but they also erode the presumption of innocence. It would be hard to justify under the ladder principle (*R. v. Antic*, 2017) that a vague “catch all” condition would be necessary for the

release of an individual awaiting bail. Due to the fact that a condition which controls a wide range of behaviour without defining those behaviours explicitly, in combination with the subjective beliefs about that behaviour from the arresting officer, can be particularly onerous.

It has been reported in the past that the Ottawa bail court specifically – within the context of all bail courts in Ontario - uses the condition of “keep the peace and be of good behaviour” extensively (Wyant, 2016). While it is interesting that this condition was seldom given as a release order in this sample (12% or 3 cases), the fact that this condition is given at all at the bail stage is arguably a threat to the presumption of innocence. Although this condition was only applied to accused facing charges that were violent in nature, it is concerning given its vagueness. “Keep the peace and be of good behaviour” is a “catch-all” condition, where theoretically, if the accused is found to be behaving in any unwanted or “unsavoury” way, even if it is not illegal and they are not breaching any of their other conditions, they could be charged with a failure to comply with this condition. Consequently, these types of conditions “criminalize ordinary behaviour” which serve to enhance “the state’s power to socially control and punish in the absence of evidence” (Myers, 2017, p. 664). When it is applied to a conditional sentence, it is seen to be less onerous because a conditional sentence first necessitates a conviction. However, at the bail stage, there has not yet been a trial nor finding of guilt. It is within this context that this condition may be considered to be particularly onerous for an individual who has yet to be proven guilty (Myers, 2017). Unnecessary and “overly broad” conditions contravene what bail conditions should be according to *R. v. Zora* (2020): necessary, reasonable, articulated clearly, minimal in number, and the least onerous. This further contributes to the “revolving door phenomenon” at bail and the widening of the net for the criminal justice system as a whole as reflected in the high number of administration of justice charges within the bail system (Deshman & Myers, 2014). Applying a

“catch all” condition to accused who have not yet been found guilty of any offence contributes to a greater number of administration of justice charges, thus contributing to the remand population unnecessarily, in contravention of the presumption of innocence clause.

5.4 – THE “MINI TRIAL”

It might be argued that show cause hearings have developed into bail hearings that are unrecognizable under the current law. The excessive length of some show cause hearings, the inclusion of witness testimony, and the acceptance of evidence in show cause hearings point to the development of a new component of the criminal justice process, one that more closely resembles a trial that is focused on determining guilt, rather than a bail hearing.

5.4.1 – Excessive Length of the Show Cause Hearing

The length of some show cause hearings - spanning more than one full day of court time - is one factor of the current bail hearing that is contributing to its development as a “mini-trial”. In fact, Wyant (2016) drew attention to this observation when stating that hearings which take multiple hours and even multiple days to conduct resemble trials more than bail hearings. Of particular issue is the fact that in this sample, almost a quarter (6 cases) of the hearings spanned more than one day. Illustrative of this phenomenon is Case 15. While arguably an exceptional case within this sample, it is nonetheless a notable occurrence. During the course of this hearing, five witnesses were questioned and the hearing extended over three days, taking an extensive 17 hours to complete. While the outstanding charges were serious – manslaughter and aggravated assault – the current charge was for an administration of justice offence. Yet, it took three days and five witnesses to conclude. In their conclusion, the judicial officer in this case noted that the accused should never have been released in the first place, thus this detention was – in a certain sense – a

righting of a previous wrong. Notably though, the purpose of bail court is primarily to determine whether an individual, who has not yet been found guilty of an offence, should be detained or released prior to a trial (Department of Justice Canada, 2023). As such, and despite arguably being unique and unrepresentative of most show cause hearings, this case seemingly exceeded the boundaries of the role of bail court within the wider criminal court process. Conducting “mini” trials is not the purpose of bail court, and it is concerning that even within the unique circumstances of this case, the show cause hearing was arguably transformed into a pseudo-trial, complete with a “sentence” of detention.

It should be noted that there have been somewhat successful attempts to remedy the length of bail hearings more broadly by using video remand court to process bail cases quickly. Video remand court allows the accused to attend from the correctional institution in which they are being detained while awaiting their hearing. This has the potential to reduce some of the case processing times as the transportation of the accused to court is no longer required. In the context of this study, this type of court would have the potential to reduce “time waiting”. Indeed, evidence has shown that these video remand courts are able to process a large volume of cases in short periods of time (Webster, 2009), avoiding the frequent delays in bringing the accused from the courthouse cells to the courtroom before each appearance and/or delays in the arrival of the accused at the courthouse itself. While the solution of video remand court is definitely promising for some reduction in bail court delay, show cause hearings – at least at the time of the study - seemingly “required” the presence of the accused in person as illustrated in all 25 cases.

5.4.2 – The Inclusion of Evidence and Witness Testimony at Show Cause Hearings

An additional factor contributing to the development of show cause hearings as “mini trials” is the inclusion of (often extensive) evidence. Evidence is a traditional component of a

criminal trial in which both the defence and prosecution are able to review its relevance and gravity in relation to the case, within the context of determining guilt. However, this same use has seemingly infiltrated show cause hearings as well. Take Case 15 for example, in which the accused was charged with failure to comply with a release order related to an outstanding charge of manslaughter, it was demonstrated that the accused contacted someone listed on their “no contact” condition via letters, resulting in the current charge. In the show cause hearing, the Crown actually possessed the letters and presented them, supporting the alleged charge. As such, the letters were a significant focal point in this hearing. This is arguably problematic as those letters are evidence to prove or disprove the alleged offence, *at trial*. That is, such evidence may be considered unnecessary in a bail hearing, whose purpose is to determine whether the accused should be released or detained prior to trial, not to determine guilt.

Similar to the inclusion of evidence in the show cause hearings is the problem of witness testimonies in bail hearings. Once again, witness testimony is an aspect of trial, not historically inherent to bail court. It may be necessary to question a surety in court in order to determine their acceptability due to the fact that there is currently no other process to do so outside of the courtroom (Wyant, 2016). Indeed, eight cases in this sample heard testimonies from potential sureties, five of which resulting in a release with a surety. However, witnesses such as investigating officers and the accused themselves arguably should not be questioned during a hearing that is intended to determine the release or detention of an accused awaiting trial. In this sample, only three cases did not include witness testimonies in the hearings. Comparatively, seven cases heard testimonies from two or more witnesses, with the maximum number of witnesses being five (Case 15). In 11 cases, the accused was questioned as a witness in their own bail hearing. Additionally, in two cases, the investigating officer was questioned, an additional two cases heard from BVSP

officers, in one case the accused's girlfriend was questioned, and in another case, the complainant was questioned.

Of continued interest in the context of the “mini trial” is the types of questions that are being asked of sureties and witnesses in bail hearings. When sureties are called to testify, they are called by the defence. However, this practice encourages Crown cross-examination, which can be “unnecessarily aggressive and intimidating” (Wyant, 2016, p. 33). Take Case 11 in this sample as a relevant example. In this case, the accused was charged with possession of marijuana, possession of proceeds from crime, possession of a concealed weapon, and failure to comply with a probation order. It was made clear in the overview of the charges that the accused had a criminal record consisting of over 30 convictions, including nine separate convictions for failure to comply with a release order. The hearing lasted over 2 hours (138 minutes) and included the questioning of two potential sureties - the mother and brother of the accused. The questioning of the two sureties largely revolved around the fact that they had been sureties for this accused in the past, during which time he had accumulated nine convictions for failure to comply. In fact, the Crown asked the mother why the accused would listen to her now. Since she had previously been a surety for the accused and he has numerous administration of justice convictions, the Crown was seemingly inferring that the mother – as a surety – had not been successful in the past, and should not be considered a credible one now. Additionally, the Crown asked the brother, who had never been a surety before, why the accused would listen to him, especially given that the accused was older. As sureties are basically volunteers to take on the role of the state, this type of questioning styles seems misplaced at bail. Indeed, they are largely used in trials to belittle or devalue a witness in order to establish that they are not credible (Wyant, 2016). Once again, as show cause hearings are

not trials, they should not be questioning witnesses for any other goal than to determine whether the accused should be released on bail.

6 – CONCLUSION

6.1 – CONTRIBUTIONS TO THE FIELD OF CRIMINOLOGY

This thesis offers a number of contributions to the field of criminology and criminal justice. It is a study that, like many before it, supports the call for change in the Canadian court system as it relates to the significant issue of court delay that continues to persist. With its use of both qualitative and quantitative methods of research, this study provides a robust overview of bail hearings in both their process and outcomes, with detailed information of the discourse in bail courts that would not otherwise be available in an exclusively quantitatively based study. Additionally, this research specifically focuses on show cause hearings – an area of the bail system that has not yet been widely studied in the Canadian criminal justice literature. In doing so, it opens the door to future research. In particular, the small sample size of this study encourages future research of wider breadth that would further contribute to the knowledge of how show cause hearings operate in Canada.

6.2 – LIMITATIONS OF THE STUDY

While this study contributes significantly to the extant literature on the bail system in Canada, it nonetheless has a number of limitations which should be mentioned. Perhaps the most significant limitation of this study is that it examined only one bail court in Ontario. A more expansive study of a greater number of bail courts in Ontario would provide a more representative overview of how bail operates in Ontario. Similarly, a study focusing on show cause hearings in

bail courts across Canada would provide a point of comparison across provinces and territories, as well as a more detailed overview of bail operations at the national level.

Equally notable, this study focused on only two months in 2017 and 2018, respectively resulting in a sample of 25 show cause hearings. Thus, this study's sample size constitutes another limitation. Although it spans a two-year period of in-person court observations, a sample of 25 show cause hearings – though important to consider in the discussion of bail court and its problems – is unlikely to be representative of the entirety of show cause hearings in this courthouse, much less in Ontario more broadly.

6.2.1 – Areas for Future Research

Based on the limitations of this study, opportunities for future research include conducting studies of greater representation across Canada in all provinces and territories. A study of this magnitude, although a time-consuming undertaking, could provide valuable knowledge surrounding the specifics of how show cause hearings work within and across provinces and territories. Given that Webster and Doob (2004) found significant variation across jurisdictions in Canada regarding criminal court case processing time, it would not be surprising if there was significant variation in case processing time of show cause hearings as well. Not only would this kind of study illuminate whether differences in the operation of show cause hearings exist across jurisdictions, it would also allow for best practices to be recorded and shared with other jurisdictions. If decided upon, this study should focus on greater representation within each province and territory, with the topics of delay and risk aversion at the forefront. Consequently, this extended study could also provide an overview of the operation of show cause hearings at the national level, which could provide an excellent point of comparison to other countries with similar justice systems. This could be valuable within the context of policymaking and other decision

making at the national level regarding reform in the bail process, particularly as decision makers and stakeholders often require a robust base of information regarding potential strategies before considering reform.

Additionally, an intersectional approach to this study would also seem a valuable endeavour. This type of research would provide greater detail regarding the implications of race and gender within the bail process and specifically, within show cause hearings in Canada. Intersectionality is a theory that describes how different aspects of one's being, such as class, gender, and race, collide and intersect within the context of greater societal systems of oppression (Crenshaw, 1989). As this sample mostly consisted of adult male accused, similar studies on show cause hearings with additional focus on females and youths would be of particular interest. Indeed, there has been an increase in the proportion of women in custody in most recent decades (Public Safety Canada, 2020). A study on the potential contribution of show cause hearings, regarding both their length and outcome, to this wider phenomenon would be beneficial in potentially uncovering reasons behind this dramatic increase. Further, as the Indigenous identity of over half of this sample was not addressed in the hearings, the proportion of Indigenous accused in this study cannot be claimed with certainty. In 2004/2005, Indigenous people accounted for 16% of the remand population (Correctional Services Program, 2017). Comparatively, 10 years later in 2014/2015, 25% of adults in remand were Indigenous, when they only accounted for 3% of the overall Canadian population (Correctional Services Program, 2017). Therefore, an examination of the intersection of show cause hearings and Indigenous accused would be of utmost importance in order to further develop understanding – and eventually remedy – of points of continued discrimination within the bail process and beyond.

6.3 – RECOMMENDATIONS

Despite the limitations outlined above, this research nonetheless contributes to knowledge surrounding the characteristics, processes and outcomes of show cause hearings as well as their consequences within the context of court delay and risk aversion. As such, a number of policy recommendations can be made for reform that might address these persistent issues.

6.3.1 – Court Delay

Recommendation 1: Courts should aim to have little to no time attributed to “time waiting” during show case hearings in order to better address court delay.

Of particular note to the issue of court delay in this study was the amount of time spent waiting in active court for something constructive to happen. Particularly within the context of ongoing court delay, this reality constitutes a seemingly unacceptable feature of show cause hearings that should not be normalized. While some delay will inevitably happen as the system is not perfect, the goal for the courts should be to have no minutes per day attributed to “time waiting”. While the amount of “time waiting” in this study was not enormous, every minute of wasted court time is an unnecessary contribution to court delay, especially when combined with other processes that add even greater time. Without this type of unnecessary delay, the wider problem of court delay could be more effectively addressed.

Recommendation 2: Judicial officers should not take significant time to repeat the facts of the hearing prior to giving a decision.

In this study, an additional factor of delay that persisted in bail hearings was the repetition of facts within the presentation of the decision. Especially when a hearing begins and concludes in the same day, all of the same individuals who were present during the opening statements are likely

also present at the time of the decision. Therefore, there is no need to reiterate the facts of the case, unless directly connected to a release condition. One might think, for example, of a certain fact that was presented in the hearing that justifies a particular type of release condition. This elimination of unnecessary repetition would not only save time and, by extension, reduce delay in show cause hearings but also provide clarity to those involved.

Recommendation 3: Show cause hearings should not extend beyond one day, apart from exceptional cases.

It has been demonstrated in the available literature as well as in this study that a high rate of adjournments in bail court is indicative of an inefficient and complacent justice system. While adjournments may be necessary in some cases, this should be the exception, not the norm. There were five cases in this sample that spanned two days of court time, and one case that spanned three days. All five cases that were resolved in two days were the result of an adjournment on the first day. The second day was reserved simply for the decision by the judicial officer. Taken together, six out of a total of 25 cases spanned more than one day, indicating significant inefficiency in the bail court and a concerning rate of inappropriate and unnecessary procedural delay in completing a show cause hearing.

6.3.2 – Risk Aversion

Recommendation 4: Echoing the *Supreme Court of Canada* in *R. v. Antic* and *R. v. Zora*, judicial officers should impose the least punitive bail conditions possible and only those that are absolutely necessary.

A significant portion of this study focused on the use of bail conditions and whether they were excessive and/or onerous. An average of almost 8 release conditions across the 16 accused who

were released in this sample points to potentially excessive bail conditions. Equally problematic, the use of “catch-all” conditions such as “keep the peace and be of good behaviour” as well as conditions unrelated to the charges indicate recourse to particularly onerous – if not also inappropriate - release conditions. Thus, bail courts should heed the ladder principle codified in section 515(3) of the *Criminal Code* and reiterated by the *Supreme Court* in *R. v. Antic* (2017) – in which the Court stated that, with exceptions, release should be the default position - and in *R. v. Zora* (2020) – in which the Court emphasized that bail conditions should be communicated clearly, should be necessary and reasonable, and be neither excessive in number nor particularly onerous in nature. Within this context, judicial referral hearings should be explored to a much greater extent than they have been to-date, as they may represent at least a partial solution to overburdening the accused with further charges if they do, in fact, breach release conditions.

Recommendation 5: Risk assessment in show cause hearings should not interfere with the presumption of innocence, protected by the *Charter of Rights and Freedoms*.

As depicted in this study and in many other studies within the bail literature, it has been illustrated that the concepts of risk assessment and risk aversion dominate the courtroom generally and are visible at show cause hearings as well. These hearings’ main purpose should be to decide whether an accused should be released or detained prior to trial. While a main purpose of the bail process is to assess and determine risk and potential for offending, this task should not become so overarching that accused are presumed risky before proven so. Thus, bail courts should work to return the show cause hearing to the consideration of release or detention awaiting trial, based on a careful assessment of potential risk, where release is the norm and detention is the exception – remembering that the presumption of innocence is paramount to the administration of justice.

6.3.3 - The Mini-Trial

Recommendation 6: The suitability of sureties should be assessed outside of the show cause hearing, and thus they should not need to be present for the hearing, nor be questioned as a witness in open court.

This is similar to Recommendation 5 as it is argued that sureties, who are sometimes referred to as “witnesses” in the show cause hearings, should not be included in the actual hearing. Due to the inclusion and acceptance of “witness” testimonies and evidence in show cause hearings, the bail process is becoming blurred with that of trials. Further, sureties in this sample were often asked questions that were relative to their character and ability to ensure that the accused would not breach their conditions if released. Wyant (2016) argues that sureties should be assessed outside of bail hearings, so as to not cause further delay when trying to find dates that work for everyone (including them) and when actually conducting the hearing. This recommendation is made in agreement with this statement, that the exclusion of sureties would act to reduce the number of days needed for a hearing, the time between arrest and the hearing that is needed to schedule the hearing, as well as the amount of time actually spent in the hearing.

7 - REFERENCES

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8 – CASE LAW & LEGISLATION

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9 – APPENDICES

APPENDIX A: Case Summaries

Case #1

This hearing took place in 2017. The accused was an adult male, charged with 8 current charges including sexual assault, assault, aggravated assault, 2 counts of mischief “under”, and forcible confinement. The accused had 9 outstanding charges including but not limited to uttering threats, criminal harassment, mischief to property, and failure to comply with a probation order. The accused had a criminal record that consisted of convictions such as assault causing bodily harm, administration of justice offences, and mischief to property under \$5000. The hearing lasted almost 5 hours (294 minutes) and resulted in a release on a recognizance without deposit. The release order did not involve a surety but did include 15 release conditions.

Case #2

This hearing took place in 2017. It involved an adult male accused of 11 current charges, including three counts of robbery with a firearm, indictable firearms offence, indictable conspiracy offence, wearing a disguise while committing an offence, and obstruction of the peace. The accused had 4 outstanding charges including 2 counts of armed robbery, pointing a firearm and possession of a firearm. The accused had a criminal record which included but was not limited to administration of justice convictions. The total length of the hearing was just over 4 hours (243 minutes). It resulted in a detention on the secondary and tertiary grounds.

Case #3

This hearing took place in 2017. The adult male accused was charged with 3 offences: failure to comply with a recognizance order, assault with a weapon, and assault causing bodily harm. The accused had 1 outstanding charge which was a firearms offence. The accused did not have a criminal record. The hearing lasted 28 minutes, as it was only the decision being heard on this specific day. The majority of the hearing took place the day before, but it was not part of the research student's collection period. The hearing resulted in a detention on secondary grounds.

Case #4

This hearing took place in 2017. The accused was a youth male, charged with 4 offences including two counts of uttering threats, and two counts of assault. The accused faced 40 outstanding charges: 19 counts of failure to comply with a probation order, and 21 counts of failure to comply with a release order. The accused had a criminal record that consists of violent convictions and administration of justice convictions. This hearing spanned 2 days, however no information is available for the first day of the hearing. For the second day, the hearing lasted 47 minutes and resulted in a detention on secondary grounds.

Case #5

This hearing took place in 2017. This hearing involved an adult male, accused of 3 offences: possession of a weapon for dangerous purposes, unauthorized possession of a firearm, and unauthorized possession of a weapon knowing it was unauthorized. The accused faced no outstanding charges. The criminal record, while dated (no convictions since 1988), included theft and administration of justice offences. The hearing was resolved after just under 5 hours (283

minutes), and the accused was released on a recognizance without deposit. The bail order included 6 release conditions.

Case #6

This hearing took place in 2017. The adult male accused was charged with 2 counts of arson. The accused had no outstanding charges. Domestic violence and administration of justice convictions were indicated on the criminal record. The hearing lasted 37 minutes, and resulted in the release of the accused on a recognizance without deposit. A total of 9 release conditions were attached to the release order.

Case #7

This hearing took place in 2017. The accused was an adult Indigenous male, charged with 2 offences: theft under \$5000 and failure to comply with a release order. The accused had 3 outstanding charges. The accused did not have a criminal record. The hearing took 19 minutes and resulted in a release on a recognizance without deposit. The bail order had 3 release conditions attached.

Case #8

This hearing took place in 2017. This hearing involved an adult Indigenous male accused with 2 counts of failure to comply with a probation order. The accused had no outstanding charges. The accused had a criminal record that reflected convictions for drug and administration of justice offences. The hearing lasted 22 minutes and resulted in a detention on secondary grounds.

Case #9

This hearing took place in 2017. The accused in this hearing was an adult male who faced 4 current charges, including possession of a schedule II prohibited drug, possession of the proceeds from crime, having a concealed weapon, and failure to comply with a probation order. The accused faced no outstanding charges. The accused in this case had a criminal record consisting of more than 30 convictions. The hearing in this case spanned just over 2 hours (138 minutes). It resulted in a release on a recognizance with a \$500 deposit. The bail order involved 2 sureties, a \$1000 surety bond, and 7 release conditions.

Case #10

This hearing took place in 2017. The accused was an adult male, charged with 2 counts of assault and forcible confinement. The accused faced no outstanding charges and did not have a criminal record. The hearing lasted 73 minutes, resulting in a recognizance without deposit. The bail order involved 1 surety, a \$1000 surety bond, and 4 release conditions.

Case #11

This hearing took place in 2017. The accused in this case was an adult male. He was charged with failure to comply with a no contact order, fraudulent redirection of mail, and 2 counts of criminal harassment. The accused had 4 outstanding charges, including assault, mischief to property. The accused did not have a criminal record. The hearing spanned 84 minutes and the accused was released on a recognizance without deposit. The bail order involved 1 surety, a \$4000 surety bond, and 7 release conditions.

Case #12

This hearing took place in 2017. The accused was an adult male charged with failure to comply with a release order. Specifically, the condition that the accused allegedly breached was not residing at the correct address listed on the release order. The accused had one outstanding charge for assault with a weapon. The accused did not have a criminal record. The hearing lasted 53 minutes, before it was abandoned as it was discovered the clerk had recorded the incorrect address on the initial bail order.

Case #13

This hearing took place in 2017. The accused in this case was a youth male. He was charged with robbery, 2 counts of failure to comply with a probation order, wearing a disguise, and possession of a firearm. The accused had no outstanding charges. The accused had a criminal record consisting of violent convictions such as assault causing bodily harm, obstruction of justice, as well as administration of justice convictions. The hearing concluded after almost 6 hours (351 minutes) with no decision. The next appearance for the decision was scheduled almost one full month after the initial hearing, which unfortunately fell outside of the collection period.

Case #14

This hearing took place in 2017. The accused was an adult male, charged with 5 offences: mischief to property, assault, resisting arrest, causing a disturbance, and possession of a schedule 1 controlled substance. The accused had 6 outstanding charges including 5 counts of assault and 1 administration of justice offence. The accused had a criminal record that consisted of convictions such as fraud. The hearing lasted 22 minutes and resulted in a consent release on a

recognizance without a deposit. 1 surety was involved, including a \$1000 surety bond, and there were 5 release conditions attached to the bail order.

Case #15

This hearing took place in 2018. The accused was a youth Indigenous female, charged with 2 counts of failure to comply with a bail order. The accused had 2 outstanding charges, including manslaughter and aggravated assault. The accused had a criminal record which consisted of offences such as theft under \$5000 and failure to appear convictions. This hearing spanned 3 consecutive days and lasted a total of almost 17 hours (1018 minutes). The accused was ultimately detained on the primary and secondary grounds.

Case #16

This hearing took place in 2018. The accused in this case was an adult male charged with 7 offences: 2 counts of aggravated assault and 5 counts of failure to comply with a release order. The accused faced outstanding charges, but the number and type was unknown. The accused had a criminal record, but the convictions on the record were not known. The hearing lasted 99 minutes and resulted in a release on a recognizance without deposit. No surety was involved. The bail order included 12 release conditions.

Case #17

This hearing took place in 2018. The accused was an adult male. He was charged with 2 counts of failure to comply with a release order. The accused had 4 outstanding charges including assault, cruelty to animals, and 2 counts of failure to comply with a release order. The accused had a criminal record that included but was not limited to administration of justice convictions.

The hearing lasted just over an hour (73 minutes) and resulted in release on a recognizance without deposit. There was no surety involved. The bail order included 13 release conditions.

Case #18

This hearing took place in 2018. The accused was an adult female was charged with 1 count of assault. The accused had no outstanding charges. The accused had a criminal record consisting of an assault conviction. The hearing lasted 24 minutes and resulted in a release on an undertaking. No surety was involved. There were 3 release conditions attached to the bail order.

Case #19

This hearing took place in 2018. The accused in this hearing was an adult male. He was charged with 7 offences: being unlawful at large while on an intermittent sentence, 5 counts of failure to comply with a release order, and possession of marijuana. The accused had 3 outstanding charges including assault, failure to comply and obstruction of justice. The accused had a criminal record which included but was not limited to administration of justice convictions. The hearing lasted 43 minutes and resulted in a release on a recognizance without deposit. The bail order included 4 release conditions.

Case #20

This hearing took place in 2018. The accused was an adult male charged with 6 offences: assault, assault of a peace officer, assault causing bodily harm, assault with a weapon, and 2 counts of failure to comply with a release order. The accused had no outstanding charges in the province of Ontario. The accused had a criminal record which included convictions for assault and assault causing bodily harm. The hearing lasted more than 2 hours (142 minutes) and resulted in a detention on the primary and secondary grounds.

Case #21

This hearing took place in 2018. The accused was an adult male charged with armed robbery and possession of a stolen vehicle. The accused had 2 outstanding charges for failure to appear in court. The accused had a criminal record that included convictions such as theft, robbery, trafficking controlled substances, and possession of controlled substances. The hearing lasted just over 2 and a half hours (151 minutes). This hearing did not result in a decision because it was abandoned. At the same time as the hearing was taking place a search warrant was being executed in which new charges arose.

Case #22

This hearing took place in 2018. The accused was an adult female who was charged with armed robbery, possession of stolen property under \$5000, and aiding and abetting. The accused had 8 outstanding charges, however the type of charges was unknown. The accused had a criminal record including convictions such as assault with a weapon. The hearing lasted over 2 hours (142 minutes) and resulted in a release on a recognizance without deposit. No surety was involved and the bail order involved 7 release conditions.

Case #23

This hearing took place in 2018. The accused was an adult male charged with assault, mischief to property under \$5000, and failure to comply with a probation order. The accused had no outstanding charges. The accused had a criminal record which included convictions for assault. The hearing lasted 54 minutes and resulted in a release on a recognizance without deposit. There was no surety involved and the bail order had 9 conditions attached.

Case #24

This hearing took place in 2018. The accused in this case was an adult Indigenous female. She was charged with robbery with a weapon. The accused had 3 outstanding charges including 2 counts of fraud, and theft under \$5000. The accused had a criminal record which included a conviction for assault. The hearing lasted 39 minutes and resulted in a release on a recognizance without deposit. The bail order involved one surety, with a \$1000 surety bond, and 9 release conditions.

Case #25

This hearing took place in 2018. The accused was an adult Indigenous male who was charged with 4 offences: assault of a police officer, causing a disturbance, and 2 counts of failure to comply with a probation order. The accused had no outstanding charges. The accused had an extensive criminal record of 165 convictions, which consisted of offences such as theft, assault causing bodily harm, assault of a peace officer, and 42 administration of justice convictions. The hearing lasted 34 minutes and the accused was released on a recognizance without deposit. No surety was involved and the bail order involved 3 release conditions.

APPENDIX B: ACCS Ranking

Courts Program Seriousness Ranking - Based on ACCS conviction and prison sentence data (1994/95 to 2000/01)

Courts Program Seriousness Ranking

Based on Charges Convicted, and Charges Sentenced to prison from 1994/95 to 2000/01

Description	UCR Code	Violent	Rank	Offence rank (median prison sentence index)				
				Sentence Index	Convictions	# Obs.	Prison	
							Incarceration Rate (%)	Median
MURDER WITH INTENT (FIRST DEGREE)	1110 1	1	1	7,196	317	250	78.9	9,125
Second Degree Murder	1120 1	2	2	9,125	4	4	100.0	9,125
MANSLAUGHTER	1130 1	3	3	1,660	377	343	91.0	1,625
HOSTAGE TAKING/UTTER THREAT RE HOSTAGE	1520 1	4	4	1,327	44	40	90.9	1,460
DISCHARGE FIREARM WITH INTENT	1450 1	5	5	1,212	106	88	83.0	1,460
ATTEMPTED MURDER	1210 1	6	6	1,062	484	352	72.7	1,460
CRIMINAL NEGLIGENCE CAUSING DEATH	1150 1	7	7	891	172	140	81.4	1,096
ROBBERY: VIOL/BOD HARM/ASS W/INTENT	1610 1	8	8	596	27,818	22,636	82.0	730
SEX ASS W/WEAPON/THREAT/CAUSE BOD HARM, ETC / INDECENT ASSAULT	1320 1	9	9	488	1,420	1,154	81.3	600
EXPLOSIVES: TO CAUSE BODILY HARM/DEATH	1628 1	10	10	477	52	38	65.4	730
CONSPIRE TO COMMIT MURDER	1220 1	11	11	475	43	28	65.1	729
AGGRAVATED SEXUAL ASSAULT / RAPE /SEX W/MINOR	1310 1	12	12	472	509	400	78.6	600
KIDNAP: CONFINEMENT/SEND OUT/HOLD FOR RANSOM / FORCIBLE CONFINEMENT	1510 1	13	13	424	3,460	2,707	78.5	540
ARSON - DISREGARD FOR HUMAN LIFE	1629 1	14	14	281	818	510	62.3	450
CRIMINAL NEGLIGENCE BODILY HARM	1470 1	15	15	273	417	292	70.0	390
AGGRAVATED ASSAULT/AVAILS OF PROSTITUTION <18 YRS	1410 1	16	16	265	3,891	2,822	72.5	365
SEXUAL INTERFERENCE	1340 1	17	17	243	10,143	6,834	67.4	360
SEXUAL ASSAULT / SEDUCTION	1330 1	18	18	161	15,430	9,214	59.7	270
EXTORTION	1620 1	19	19	145	1,049	632	60.2	240
ABDUCT PERSON UNDER 16	1540 1	20	20	99	51	28	54.9	180
ABDUCT PERSON UNDER 14	1530 1	21	21	97	69	32	46.4	210
UNLAWFULLY CAUSING BODILY HARM	1440 1	22	22	89	361	167	46.3	150
ASSAULT WITH WEAPON/CAUSING BODILY HARM	1420 1	23	23	44	55,028	26,786	48.6	90
ABANDON CHILD / ACCESSORY AFTER THE FACT TO MURDER	1630 1	24	24	31	511	174	34.1	90
ABDUCT COUNTER CUSTODY ORDER - IND	1560 1	25	25	30	55	20	36.4	82
INFANTICIDE	1140 1	26	26	28	34	14	41.2	66
TORTURE / RESIST ARREST/PREVENT SEIZURE	1480 1	27	27	26	6,344	3,658	57.7	45
UTTER THREATS - PERSON/PROP/ANIMAL	1627 1	28	28	25	87,751	27,850	41.1	60
ASSAULT / ASSAULT PEACE OFFICER	1460 1	29	29	22	17,632	8,527	48.4	45
CRIMINAL HARASSMENT	1625 1	30	30	21	10,984	3,811	34.7	80
ABDUCT COUNTER CUSTODY ORDER - SUM	1550 1	31	31	18	155	47	30.3	60
CHILD BIRTH OFFENCES	1160 1	32	32	17	39	22	58.4	30
ASSAULT - APPLY FORCE/THREAT/IMPEDE	1430 1	33	33	14	206,987	63,153	30.5	45
REMOVAL OF A CHILD FROM CANADA	1545 1	34	34	-	-	-	0.0	-
IMPAIRED DRIVING B/V/A - CAUSE DEATH	9210 2	35	35	633	331	267	86.7	730
LIVE OFF AVAILS OF PROSTITUTION < 18 YRS	3115 2	36	36	504	45	36	80.0	630
USE FIREARM IN COMMISSION OF OFFENCE	3360 2	37	37	355	1,607	1,563	97.3	365
DANGEROUS OPERATION MV - CAUSE DEATH	9110 2	38	38	340	251	158	62.0	540
IMPORTING AND EXPORTING	4340 2	39	39	339	1,879	1,518	80.8	420
LAUNDERING PROCEEDS OF CRIME	3825 2	40	40	339	28	13	46.4	730
EXPLOSIVES: TO DESTROY PROP/POSS TO ENDANG	3310 2	41	41	236	420	272	64.8	365
PROCURE/SOLICIT ILICIT SEX/ENTICE, ETC	3120 2	42	42	236	679	382	56.3	420
DEFACING OR IMPAIRING OR COUNTERFEITING	3820 2	43	43	223	87	41	61.2	365
ATTEMPT/OBTAIN SEX FROM PERSON < 18 YRS	3125 2	44	44	212	344	203	59.0	360
ARSON - DAMAGE TO PROPERTY	2110 2	45	45	205	2,393	1,363	57.0	360
NUISANCES - endanger life - cause injury	3740 2	46	46	193	550	291	52.6	365

Courts Program Seriousness Ranking - Based on ACCS conviction and prison sentence data (1994/95 to 2000/01)

Description	UCR Code	Violent	Rank	Offence rank (median prison sentence index)				
				Sentence Index	Convictions	Prison		
						# Obs.	Incarceration Rate (%)	Median
BREAK & ENTER INTENT/COMMIT IND OFF	2120 2	47	187	128,368	88,959	69.3	270	
ATTEMPT/ACCESSORY TO IND OFFENCE	3830 2	48	139	27,955	16,133	57.7	240	
TRAFFICKING IN SUBSTANCE	4240 2	49	126	49,374	34,495	69.9	180	
PROPERTY OBTAINED BY CRIME	4825 2	50	126	1,545	1,079	69.8	180	
FRAUDULENTLY TAKE/HOLD/DEFACE/MAKE BRAND	3780 2	51	124	16,530	11,399	69.0	180	
IMPAIRED DRIVING B.VIA	9220 2	52	121	3,219	2,161	67.1	180	
TRAFFICKING DRUGS	4230 2	53	118	207	136	65.7	180	
OTHER CDSA OFFENCES	4990 2	54	115	1,978	843	42.8	270	
DANGEROUS OPERATION OF MV	9120 2	55	114	1,422	898	63.2	180	
THEFT > \$5000 - MV	2150 2	56	111	26,625	16,470	61.9	180	
CORRUPT MORALS	3460 2	57	105	243	71	29.2	360	
OFFENCES IN RELATION TO WRECK / INTIMIDATION								
VIOLENCE/THREAT, ETC	3790 2	58	103	1,743	868	38.3	270	
CHILD PORN / PRINT PUBLISH POSS	3455 2	59	98	276	151	54.7	180	
FAILS TO REPORT LOSING OR FINDING FIREARM	3390 2	60	88	199	97	48.7	180	
ORDER PROHIBITING POSSESSION OF FIREARMS, ETC.	3370 2	61	72	1,489	889	59.7	120	
POSS. WEAPONS FOR TRAFFICKING	3365 2	62	63	479	201	42.0	150	
INVASION OF PRIVACY	3750 2	63	58	152	37	24.3	240	
FORGERY / FRAUD	2160 2	64	55	203,228	93,219	45.9	120	
POINTING A FIREARM	3385 2	65	54	5,770	3,109	53.9	100	
POSS STOLEN PROP. FROM CANADA/OTHER	2150 2	66	48	100,808	53,614	53.2	90	
PRISON BREACH / ESCAPE CUSTODY	3440 2	67	46	6,273	4,794	76.4	60	
DANGEROUS OPERATION - PUN S.249(A)(23)(1A)	9130 2	68	45	16,103	8,035	49.9	90	
Flight - use of motor vehicle in flight	9131 2	68						
Flight - use of motor vehicle in flight	9132 2	68						
Flight - use of motor vehicle in flight	9133 2	68						
POSSESSION OF WEAPON FOR DANGEROUS / UNAUTHORIZED								
POSSESS	3375 2	69	42	22,188	10,327	46.5	90	
POSSESSION, OTHER DRUGS	4130 2	70	41	3,865	1,778	46.0	90	
COUNTERFEIT MONEY / MAKE/BUY/POSSESS/IMPORT	3420 2	71	40	3,318	1,477	44.5	90	
DUTY OF PERSONS TO PROVIDE NECESSARIES / DEFAMATORY								
LIBEL	3770 2	72	38	4,086	1,793	43.9	90	
PRODUCTION OF SUBSTANCE	4440 2	73	36	6,349	2,894	42.4	90	
UNAUTHORIZED IMPORT AND EXPORT	3380 2	74	37	453	158	34.9	105	
SEARCH AND SEIZURE	3720 2	75	36	2,822	781	29.8	120	
ESCAPE CUSTODY BEFORE TERM EXPIRES	3480 2	76	36	48,494	43,040	88.8	40	
MISCHIEF / DAMAGE PROHIBIT/STRUCT PERSON, ETC	2170 2	77	30	39,401	13,053	33.1	90	
OPERATE VEHICLE WHILE DISQUALIFIED	9220 2	78	29	48,578	30,061	64.5	45	
INSTRUMENT/ATURE - DRUG USE - 1ST OFF PARTICIPATION IN								
CRIMINAL ORG	3890 2	79	25	14,512	7,999	55.1	45	
ACCEPT OFFER BRIBE / PERJURY	3230 2	80	25	18,375	6,753	41.2	60	
TREASON / HARBORING, ETC	3710 2	81	24	2,484	1,014	40.8	60	
THEFT < \$5000 - THEFT INTENT / DEPRIVE/PLEDGE, ETC	2140 2	82	24	240,843	95,438	39.6	60	
HIT & RUN PERSON	3010 2	83	23	10,198	3,863	37.9	60	
BREACH OF / FAIL TO COMPLY PROHIBITION ORDER	3520 2	84	17	170,568	98,278	56.4	30	
FAIL TO ATTEND COURT	3510 2	85	18	89,599	32,811	34.7	30	
UNSAFE STORAGE OF FIREARMS	3395 2	86	18	11,254	2,847	18.2	90	
UNSAFE OPERATION OF MOTOR VEHICLE	9230 2	87	18	157	7	4.5	360	
FAIL TO COMPLY/APPPEAR, ETC	3410 2	88	18	237,975	125,106	52.6	30	
MISCHIEF TO PROP > \$5000	2172 2	89	18	7,834	2,732	34.9	45	
YOUTH CRIMINAL JUSTICE ACT	6490 2	90	18	13,890	7,059	51.7	30	
IMMIGRATION ACT	6500 2	91	15	2,784	1,836	58.8	25	

Courts Program Seriousness Ranking - Based on ACCS conviction and prison sentence data (1994/95 to 2000/01)

Description	UCR		Offence rank (median prison sentence index)							
			Code	Violent	Rank	Sentence Index	Convictions	Prison		Median
								# Obs.	Incarceration Rate (%)	
INDECENT/HARRASSING TELEPHONE CALLS	3530	2	92	15	4,401	1,066	24.2	60		
OBSTRUCT PEACE OFFICER	3470	2	93	13	47,748	20,636	43.2	30		
TRESPASS AT NIGHT	3490	2	94	12	3,065	1,225	40.0	30		
INDECENT ACTS / NUDITY	3450	2	95	11	6,442	1,643	25.5	45		
IMPAIRED DRIVING - PUN	9250	2	96	11	149	48	32.2	35		
MISCHIEF TO PROP < \$5000	2174	2	97	10	46,511	14,793	31.8	30		
CUSTOMS ACT	6300	2	98	9	2,899	292	10.1	90		
FAIL/REFUSE TO PROVIDE BREATH SAMPLE	9240	2	99	9	29,444	8,516	28.9	30		
FALSE FIRE ALARM / INJURE OR ENDANGER OTHER ANIMALS	3810	2	100	7	1,808	413	22.8	30		
IMPAIRED OPERATION - OVER 80MG	9230	2	101	6	321,020	69,134	21.5	30		
CAUSING A DISTURBANCE, EXPOSE/LOITER, ETC	3430	2	102	6	21,086	4,213	20.0	30		
POSSESSION OF SUBSTANCE	4140	2	103	6	95,534	16,067	18.9	30		
INCOME TAX ACT	6150	2	104	5	11,370	517	4.5	120		
PROSTITUTION, STOP MV/IMPEDE TRAF/PERSON	3130	2	105	3	16,010	4,800	28.7	12		
BAWDY HOUSE - KEEPER	3110	2	106	3	1,837	79	4.3	60		
BETTING, POOL-SELLING, BOOKMAKING	3230	2	107	1	1,287	42	3.3	30		
KEEPING DISORDERLY HOUSE - GAMING	3220	2	108	1	1,139	12	1.1	70		
DISORDERLY HOUSES - GAMING AND BETTING	3760	2	109	-	15	-	0.0	-		
IMPORTING AND EXPORTING Schedule I	4330	2	110	-	-	-	0.0	-		
FIREARMS ACT	6550	2	111	-	5	-	0.0	-		
OTHER FEDERAL STATUTE OFFENCES	6900	3	112	17	188,722	27,400	14.5	120		

Notes

APPENDIX C: Full Variable List with Coding Guide

Variable	Coding Rule
General Case Data	
Case #	Case Label #
Year	1 = 2017; 2 = 2018; 999 = Unknown
Date	MMDDYY
Courtroom #	1 = Courtroom 6; 2 = Courtroom 3/9; 3 = Courtroom 5V; 4 = WASH
WASH	0 = No; 1 = Yes; 999 = Unknown
JP or Judge	1 = Justice of the Peace; 2 = Judge
JP/Judge Name	Last name, first initial, or descriptor.
Accused	Last Name, First Name
Youth	0 = No; 1 = Yes; 999 = Unknown
Publication Ban	0 = No; 1 = Yes; 999 = Unknown
Defence	Last Name, First Name
Crown	Last Name, First Name
Crown ProvFed	1 = Provincial; 2 = Federal; 999 = Unknown
Gender	1 = Male; 2 = Female; 999 = Unknown
Indigenous	0 = Non-Indigenous; 1 = Indigenous; 999 = Unknown
Interpreter	0 = No Interpreter; 1 = Interpreter; 999 = Unknown
Interpreter Language	Language into which interpreter translated; 888 = N/A (no interpreter); 999 = Unknown
RE: Interpreter	Comments RE: Interpreter (e.g., for whom?); 888 = N/A (no interpreter); 999 = Unknown
Official Language	1 = English; 2 = French; 999 = Unknown
Number of Days	Number of days that the hearing is heard; i.e., 1, 2, 3, etc.
Start time	72:00 Clock
End time	72:00 Clock
Total length	in minutes
Time Waiting	Time, in minutes, during active court (with JP at bench) waiting to be ready to proceed (i.e., waiting for accused to be brought up or for counsel to appear)
Current Charges #	i.e., 1, 2, 3, 4, etc.; 999 = Unknown (includes admin)
Current Charges	Name of charge(s)
ACCS Current Charge	Record the 2003 ACCS Seriousness Ranking for the most serious current charge; 999 = Unknown
Current Charge Type	1 = Violent Offence, 2 = Property Offence, 3 = Administration of Justice Offence, 4 = Firearms Offence, 5 =

	Drugs/CDSA Offence; 6 = Other; 999= Unknown; code for most serious current charge
Violent Charges #	Number of current violent charges; i.e., 0, 1, 2, 3 etc.
Domestic Violence	0 = No; 1 = Yes; 888 = N/A (non-violent); 999 = Unknown
Firearms Related	0 = No; 1 = Yes; 888 = N/A; 999 = Unknown
Current/Outstanding AdminJ	0 = No; 1 = Yes; 888 = N/A; 999 = Unknown
Current AdminJ #	Number of current administration of justice charges; i.e., 0, 1, 2, 3, etc.
Outstanding Charges	0 = No; 1 = Yes; 999 = Unknown
Outstanding Charges #	i.e., 0, 1, 2, 3, 4, etc.; 888 = N/A (no outstanding charges); 999 = Unknown
ACCS Outstanding Charge	Record the 2003 ACCS Seriousness Ranking for the most serious current charge; 888 = N/A (no outstanding charges); 999 = Unknown
Outstanding Charge Type	1 = Violent Offence, 2 = Property Offence, 3 = Administration of Justice Offence, 4 = Firearms Offence, 5 = Drugs/CDSA Offence; 6 = Other; 888 = N/A (no outstanding charges); 999= Unknown; code for most serious current charge
Outstanding AdminJ	Number of outstanding administration of justice charges; i.e., 0, 1, 2, 3, etc.; 999 = Unknown
Total Charges #	Current Charges + Outstanding Charges i.e., 1, 2, 3, 4, etc.; 999 = Unknown
Total Charge Type	1 = Violent Offence, 2 = Property Offence, 3 = Administration of Justice Offence, 4 = Firearms Offence, 5 = Drugs/CDSA Offence; 6 = Other, 999= Unknown; code for most serious current charge
Total AdminJ Charges	Number of total administration of justice charges; i.e., 0, 1, 2, 3, etc.; 999 = Unknown
Adult Criminal Record	0 = No; 1 = Yes; 999 = Unknown
Criminal Record Date	Date (YYYY)of last conviction; 888 = N/A (No CR); 999 = Unknown
Earliest CR conviction	Date (YYYY) of earliest adult conviction; 888 = N/A (No CR); 999 = Unknown
Criminal Record Type	1 = Violent Offence, 2 = Property Offence, 3 = Administration of Justice Offence, 4 = Firearms Offence, 5 = Drugs/CDSA Offence; 6 = Other, 888 = N/A (No CR); 999= Unknown; code for most serious current charge
AdminJ Convictions	0 = No; 1 = Yes; 999 = Unknown
Number FTC Convictions	Number of FTC Convictions; i.e., 0, 1, 2, 3, etc.; 888 = N/A (No CR); 999 = Unknown
Number FTA Convictions	Number of FTC Probation Convictions; i.e., 0, 1, 2, 3, etc.; 888 = N/A (No CR); 999 = Unknown
Number FTC Probation Convictions	Number of FTC Probation Convictions; i.e., 0, 1, 2, 3, etc.; 888 = N/A (No CR); 999 = Unknown

Total AdminJ Convictions	Number of AdminJ convictions; i.e. 0, 1, 2, 3, etc.; 888 = N/A (No CR); 999 = Unknown
Legal Type	0 = Self Represented; 1 = Duty Counsel; 2 = Hired Lawyer, Present; 3 = Hired Lawyer, sends student; 4 = Hired lawyer, sends instructions with Duty Counsel; 5 = Lawyer, not (yet) retained; 999 = Unknown
Legal Aid	0 = No Legal Aid; 1 = Legal Aid Obtained; 2 = Seeking Legal Aid; 999 = Unknown
RE: Legal Representation	Comments RE: Legal Rep; 888 = N/A (no comments)
Accused Presence	0 = not present; 1 = in person; 2 = video, from court cells; 3 = video, from detention centre; 4 = via telephone; 5 = other; 999 = unknown
Appearance Outcome	1 = Consent Release; 2 = Adjournment; 3 = Released; 4 = Detained; 5 = Traversed; 6 = Other; 999 = Unknown
Show Cause Data	
Onus	1 = Crown; 2 = Reverse; 999 = Unknown
Grounds	1 = Primary Grounds; 2 = Secondary Grounds; 3 = Tertiary Grounds; 4 = Primary and Secondary Grounds; 5 = Primary and Tertiary Grounds; 6 = Secondary and Tertiary Grounds; 7 = ALL grounds; 999 = Unknown
Scheduled Slots	number of scheduled slots; 888 = N/A (in 2018 they did not do scheduled slots); 999 = Unknown
Witness #	Number of witnesses to be called for evidence; 999 = Unknown
Accused as Witness	0 = No; 1 = Yes; 999 = Unknown
Other Witness Type	1 = One Surety; 2 = Two Sureties Only; 3 = BVSP; 4 = OPS; 5 = OPS and One Surety; 6 = OPS and Two Sureties; 7 = OPS and BVSP; 8 = Complainant; 9 = Other; 888 = N/A (no witnesses) 999 = Unknown
Crown Opening Start	72:00 clock; 999 = Unknown
Crown Opening End	72:00 clock; 999 = Unknown
Crown Opening Time	Length of Crown Opening Submissions, in minutes; 999 = Unknown
Defence Opening Start	72:00 clock; 999 = Unknown
Defence Opening End	72:00 clock; 999 = Unknown
Defence Opening Time	Length of Defence Opening Submissions, in minutes; 999 = Unknown
Total Opening Time	Total length of Opening Submissions, in minutes; 999 = Unknown
RE: Facts of Case	Comments RE: Facts of the case; 999 = N/A
Witness 1 Role	1 = Accused; 2 = Surety; 3 = BVSP; 4 = OPS; 5 = Complainant; 6 = Other; 7 = No witness called; 999 = unknown

Witness 1 Start	72:00 clock; 999 = Unknown
Witness 1 End	72:00 clock; 999 = Unknown
Witness 1 Defence Start	72:00 clock; 999 = Unknown
Witness 1 Defence End	72:00 clock; 999 = Unknown
Witness 1 Defence Time	Length of Defence Qs to Witness 1, in minutes; 999 = Unknown
RE: Witness 1 Defence	Comments RE: Defence Qs for Witness 1; 999 = N/A
Witness 1 Crown Start	72:00 clock; 999 = Unknown
Witness 1 Crown End	72:00 clock; 999 = Unknown
Witness 1 CrownTime	Length of Crown Qs to Witness 1, in minutes; 999 = Unknown
RE: Witness 1 Crown	Comments RE: Crown Qs for Witness 1; 999 = N/A
Witness 1 JP/J Start	72:00 clock; 999 = Unknown
Witness 1 JP/J End	72:00 clock; 999 = Unknown
Witness 1 JP/J Time	Length of JP Qs to Witness 1, in minutes; 999 = Unknown
Witness 1 Total Time	Total length of Qs to Witness 1, in minutes; 999 = Unknown
RE: Witness 1 JP/J	Comments RE: Crown Qs for Witness 1; 999 = N/A
Witness 2 Role	1 = Accused; 2 = Surety; 3 = BVSP; 4 = OPS; 5 = Complainant; 6 = Other; 7 = No witness called; 999 = unknown
Witness 2 Start	72:00 clock; 999 = Unknown
Witness 2 End	72:00 clock; 999 = Unknown
Witness 2 Defence Start	72:00 clock; 999 = Unknown
Witness 2 Defence End	72:00 clock; 999 = Unknown
Witness 2 Defence Time	Length of Defence Qs to Witness 2, in minutes; 999 = Unknown
RE: Witness 2 Defence	Comments RE: Defence Qs for Witness 2; 999 = N/A
Witness 2 Crown Start	72:00 clock; 999 = Unknown
Witness 2 Crown End	72:00 clock; 999 = Unknown
Witness 2 CrownTime	Length of Crown Qs to Witness 2, in minutes; 999 = Unknown
RE: Witness 2 Crown	Comments RE: Crown Qs for Witness 2; 999 = N/A
Witness 2 JP/J Start	72:00 clock; 999 = Unknown
Witness 2 JP/J End	72:00 clock; 999 = Unknown
Witness 2 JP/J Time	Length of JP Qs to Witness 2, in minutes; 999 = Unknown
Witness 2 Total Time	Total length of Witness 2 Qs, in minutes; 999 = Unknown
RE: Witness 2 JP/J	Comments RE: Crown Qs for Witness 2; 999 = N/A
Witness 3 Role	1 = Accused; 2 = Surety; 3 = BVSP; 4 = OPS; 5 = Complainant; 6 = Other; 7 = No witness called; 999 = unknown
Witness 3 Start	72:00 clock; 999 = Unknown

Witness 3 End	72:00 clock; 999 = Unknown
Witness 3 Defence Start	72:00 clock; 999 = Unknown
Witness 3 Defence End	72:00 clock; 999 = Unknown
Witness 3 Defence Time	Length of Defence Qs to Witness 3, in minutes; 999 = Unknown
RE: Witness 3 Defence	Comments RE: Defence Qs for Witness 3; 999 = N/A
Witness 3 Crown Start	72:00 clock; 999 = Unknown
Witness 3 Crown End	72:00 clock; 999 = Unknown
Witness 3 CrownTime	Length of Crown Qs to Witness 3, in minutes; 999 = Unknown
RE: Witness 3 Crown	Comments RE: Crown Qs for Witness 3; 999 = N/A
Witness 3 JP/J Start	72:00 clock; 999 = Unknown
Witness 3 JP/J End	72:00 clock; 999 = Unknown
Witness 3 JP/J Time	Length of JP Qs to Witness 3, in minutes; 999 = Unknown
Witness 3 Total Time	Total length of Witness 3 Qs, in minutes; 999 = Unknown
RE: Witness 3 JP/J	Comments RE: Crown Qs for Witness 3; 999 = N/A
Witness 4 Role	1 = Accused; 2 = Surety; 3 = BVSP; 4 = OPS; 5 = Complainant; 6 = Other; 7 = No witness called; 999 = unknown
Witness 4 Start	72:00 clock; 999 = Unknown
Witness 4 End	72:00 clock; 999 = Unknown
Witness 4 Defence Start	72:00 clock; 999 = Unknown
Witness 4 Defence End	72:00 clock; 999 = Unknown
Witness 4 Defence Time	Length of Defence Qs to Witness 4, in minutes; 999 = Unknown
RE: Witness 4 Defence	Comments RE: Defence Qs for Witness 4; 999 = N/A
Witness 4 Crown Start	72:00 clock; 999 = Unknown
Witness 4 Crown End	72:00 clock; 999 = Unknown
Witness 4 CrownTime	Length of Crown Qs to Witness 4, in minutes; 999 = Unknown
RE: Witness 4 Crown	Comments RE: Crown Qs for Witness 4; 999 = N/A
Witness 4 JP/J Start	72:00 clock; 999 = Unknown
Witness 4 JP/J End	72:00 clock; 999 = Unknown
Witness 4 JP/J Time	Length of JP Qs to Witness 4, in minutes; 999 = Unknown
Witness 4 Total Time	Total length of Witness 4 Qs, in minutes; 999 = Unknown
RE: Witness 4 JP/J	Comments RE: Crown Qs for Witness 4; 999 = N/A
Witness 5 Role	1 = Accused; 2 = Surety; 3 = BVSP; 4 = OPS; 5 = Complainant; 6 = Other; 7 = No witness called; 999 = unknown
Witness 5 Start	72:00 clock; 999 = Unknown
Witness 5 End	72:00 clock; 999 = Unknown

Witness 5 Defence Start	72:00 clock; 999 = Unknown
Witness 5 Defence End	72:00 clock; 999 = Unknown
Witness 5 Defence Time	Length of Defence Qs to Witness 5, in minutes; 999 = Unknown
RE: Witness 5 Defence	Comments RE: Defence Qs for Witness 5; 999 = N/A
Witness 5 Crown Start	72:00 clock; 999 = Unknown
Witness 5 Crown End	72:00 clock; 999 = Unknown
Witness 5 CrownTime	Length of Crown Qs to Witness 5, in minutes; 999 = Unknown
RE: Witness 5 Crown	Comments RE: Crown Qs for Witness 5; 999 = N/A
Witness 5 JP/J Start	72:00 clock; 999 = Unknown
Witness 5 JP/J End	72:00 clock; 999 = Unknown
Witness 5 JP/J Time	Length of JP Qs to Witness 5, in minutes; 999 = Unknown
Witness 5 Total Time	Total length of Witness 5 Qs, in minutes; 999 = Unknown
RE: Witness 5 JP/J	Comments RE: Crown Qs for Witness 5; 999 = N/A
BVSP	0 = No; 1 = Yes; 888 = N/A (not released on a recognizance); 999 = Unknown
524.8	0 = No; 1 = Yes; 888 = N/A (not released); 999 = Unknown
Condition #	Number of conditions on release order; i.e., 0, 1, 2, 3, etc.; 888 = N/A (not released); 999 = Unknown
Condition Reside	0 = No; 1 = Yes; 888 = N/A (not released); 999 = Unknown
Condition Notify Address Change	0 = No; 1 = Yes; 888 = N/A (not released); 999 = Unknown
Condition BVSP 4	0 = No; 1 = Yes; 888 = N/A (not released); 999 = Unknown
Condition No Weapons	0 = No; 1 = Yes; 888 = N/A (not released); 999 = Unknown
Condition Weapons Deposit	0 = No; 1 = Yes; 888 = N/A (not released); 999 = Unknown
Condition No Drugs	0 = No; 1 = Yes; 888 = N/A (not released); 999 = Unknown
Condition No Trafficking Paraphernalia	0 = No; 1 = Yes; 888 = N/A (not released); 999 = Unknown
Condition Alcohol	0 = No; 1 = Yes; 888 = N/A (not released); 999 = Unknown
Condition No Go	0 = No; 1 = Yes; 888 = N/A (not released); 999 = Unknown
No Go Locale	Type of location accused in prohibited from attending; 888 = N/A (not given such condition); 999 = Unknown
Condition No Contact	0 = No; 1 = Yes; 888 = N/A (not released); 999 = Unknown
No Contact #	Number of individuals with whom contact is prohibited; i.e., 0, 1, 2, 3, etc.; 888 = N/A (not released); 999 = Unknown
No Contact Type	1 = Complainant; 2 = Co-Accused; 3 = Witness; 4 = Complainant and Co-Accused; 5 = Complainant and Witness; 6 = Co-Accused and Witness; 7 = Complainant, Co-Accused and Witness; 8 = Other; 888 = N/A (not given such condition); 999 = Unknown

Condition No Contact Distance	0 = No; 1 = Yes; 888 = N/A (not released); 999 = Unknown
Distance Amount	meters the accused is to stay away from an individual; 888 = N/A (not given such condition); 999 = Unknown
Condition Check-In OPS	0 = No; 1 = Yes; 888 = N/A (not released); 999 = Unknown
Condition KPBGB	0 = No; 1 = Yes; 888 = N/A (not released); 999 = Unknown
Condition Community Programming	0 = No; 1 = Yes; 888 = N/A (not released); 999 = Unknown
Condition Curfew	0 = No; 1 = Yes; 888 = N/A (not released); 999 = Unknown
Additional Conditions #	Number of "additional" conditions applied, not listed above; 888 = N/A (not given additional conditions or not released); 999 = Unknown
RE: Names of Additional Conditions	Names/descriptions of additional conditions; 888 = N/A; 999 = Unknown
JP/J Questions Proposed Conditions	0 = No; 1 = Yes; 888 = N/A (not released); 999 = Unknown
JP/J Consults Crown Conditions	0 = No; 1 = Yes; 888 = N/A (not released); 999 = Unknown
JP/J Consults Defence Conditions	0 = No; 1 = Yes; 888 = N/A (not released); 999 = Unknown
Defence or Crown Question Conditions	0 = No; 1 = Yes; 888 = N/A (not released); 999 = Unknown
RE: Qs to Conditions	Comments RE: Conditions imposed; 999 = N/A