

A Tale of Two Cities:

An Exploratory Study of Court Culture as an Explanation of Case Processing Efficiency in Ontario Bail Courts

Sarah Heath, M.A.

April 26, 2011

©Sarah Heath, Ottawa, Canada, 2011 1

The percent of cases completed on the first appearance has decreased

(all Canadian criminal courts from first appearance to disposition)

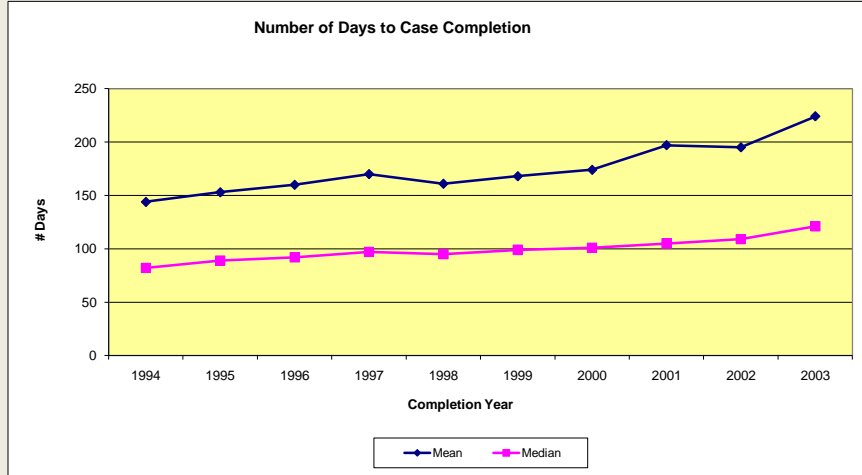
Completion Year	% of Cases
1994	12.2%
1995	11.8%
1996	11.2%
1997	10.3%
1998	10.1%
1999	9.1%
2000	8.4%
2001	9.7%
2002	9.0%
2003	8.2%

Source: *Adult Criminal Court Survey, Statistics Canada*

©Sarah Heath, Ottawa, Canada, 2011 2

The mean and median number of days required to complete a case has increased

(all Canadian criminal courts from first appearance to disposition)



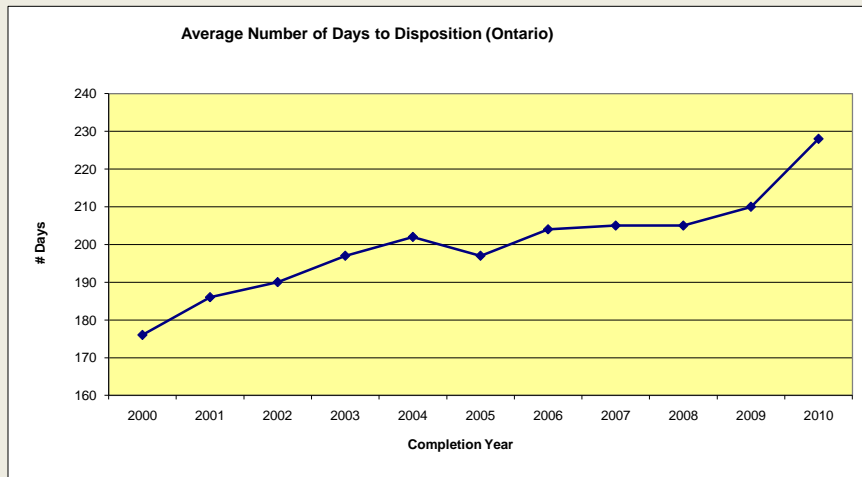
Source: Adult Criminal Court Survey, Statistics Canada

©Sarah Heath, Ottawa, Canada, 2011

3

The average number of days required to dispose of a case has increased

(Ontario Provincial courts from first appearance to disposition)



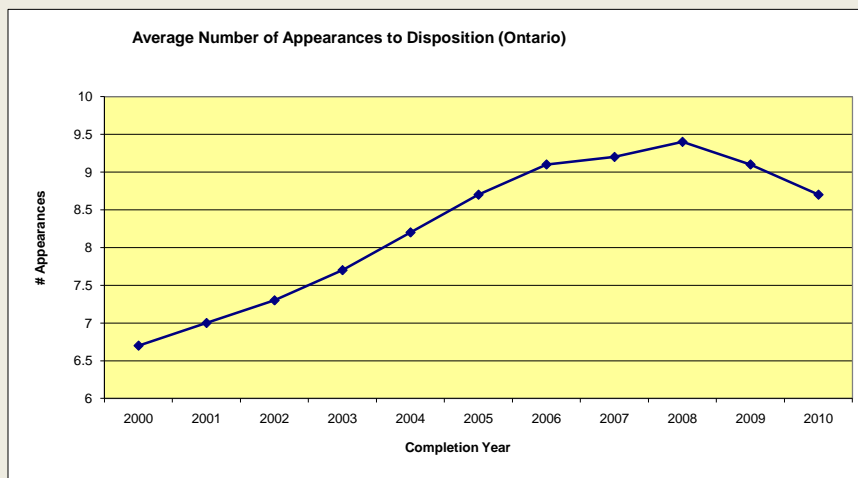
Source: Ontario Ministry of Attorney General, 2010

©Sarah Heath, Ottawa, Canada, 2011

4

The average number of appearances required to dispose of a case has increased*

(Ontario Provincial courts from first appearance to disposition)



Source: Ontario Ministry of Attorney General, 2010

©Sarah Heath, Ottawa, Canada, 2011

5

Consequences of Delay

- Case-specific consequences
 - Termination of cases (*R v. Askov*, [1990] 2 S.C.R. 1199)
 - Increased likelihood of the presumption of guilt (bail) (Hagan & Morden, 1981)
 - Decreased ability to defend oneself (bail) (Hagan & Morden, 1981)
 - Tainted Witnesses (Leverick & Duff, 2002)
 - Emotional and financial stress for the accused, if eventually found guilty (Leverick & Duff, 2002)
- Criminal justice consequences
 - Loss of public confidence in the criminal justice system
 - Unnecessary demands on limited resources
 - Increased 'dead time'
 - Large remand population

©Sarah Heath, Ottawa, Canada, 2011

6

Need for Intervention

- National (FPT) Level
 - E.g. National Justice Summit
- Individual Jurisdictions
 - E.g. Alberta's Early Case Resolution
 - E.g. Ontario's Justice on Target strategy
 - "30% reduction in time to disposition in 4 years"

©Sarah Heath, Ottawa, Canada, 2011

7

Traditional Avenues of Intervention

- Structural
 - Formal organization and procedures of the court
 - Calendaring systems
 - Charging practices
 - Speedy trial provisions
 - Record keeping practices
- Administrative
 - Resource and workload characteristics of a court
 - Case characteristics
 - Defendant characteristics
 - Court size
 - Administrative workload

©Sarah Heath, Ottawa, Canada, 2011

8

More Recent Advances

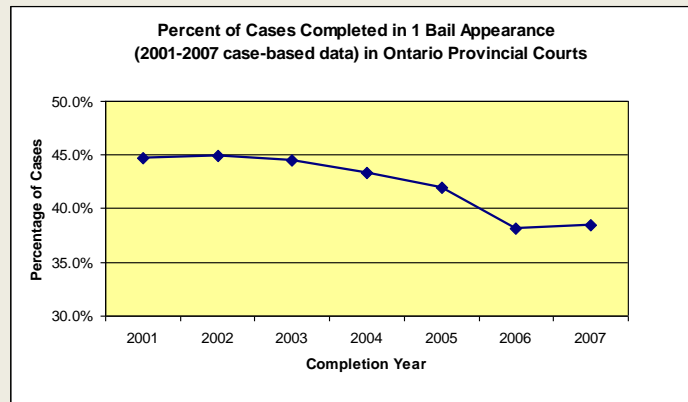
- Cultural
 - Informal attitudes, practices and relationships shared by all members of the local legal community within the court
 - Attitudes & views
 - E.g. what happens on/before first appearance
 - Practices & Incentives
 - E.g. whether adjournment requests are disputed
 - Workgroup relationships
 - E.g. whether the Judge influences the actions of others

©Sarah Heath, Ottawa, Canada, 2011

9

The percent of cases completed in 1 bail appearances is decreasing in Ontario

(Ontario bail courts from first appearance in bail to bail determination)



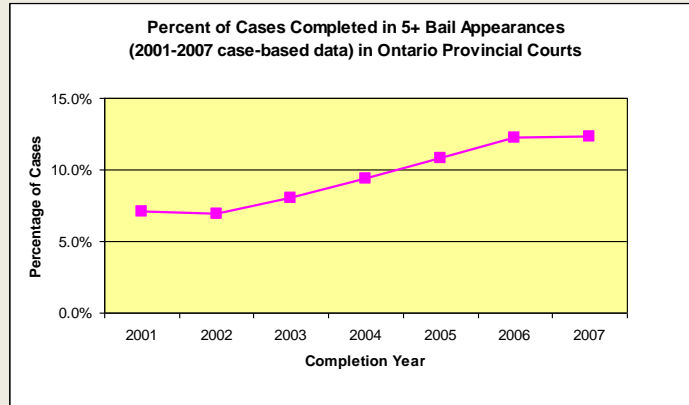
Source: Webster, 2007

©Sarah Heath, Ottawa, Canada, 2011

10

The percent of cases completed in 5+ bail appearances is increasing in Ontario

(Ontario bail courts from first appearance in bail to bail determination)



Source: Webster, 2007

©Sarah Heath, Ottawa, Canada, 2011

11

Study Sample Court Characteristics

Characteristic	Court A	Court B
Number of Bail Cases (2007)	455	546
Number of Local Justices of the Peace	1	1
Number of Full and Part-time Crowns	3 full-time 1 part-time	4 full-time 1 part-time
Number of Local Defence Counsel	3	5
Location	Eastern Ontario (50 KM from Quebec border)	Eastern Ontario (70 KM from Quebec border)
Languages Spoken (staff and clientele)	English and French	English and French
Average Length of Time In session per day	1hr 8 mins	1 hr 8mins

©Sarah Heath, Ottawa, Canada, 2011

12

Study Sample Case Processing Speed

Measure	'Efficient' Court	'Inefficient' Court
Percentage of Bail Cases Completed on the 1st appearance (2007)	60.7%	29.9%
Percentage of Bail Cases Completed on the 5th + appearance (2007)	3.5%	13.2%
Average number of appearances to complete bail (2007)	1.7	2.6

©Sarah Heath, Ottawa, Canada, 2011

13

Methods

- Court observation
- Semi-structured interviews with key court personnel
- Content analysis (to code, count, & describe interview themes)

©Sarah Heath, Ottawa, Canada, 2011

14

Findings – ‘Efficient’ Court

- Need to minimize custody
- Everyone is ready on the first appearance
- Out of court discussion happens a lot
- Cooperative
- Flexible
- Consensual
- Trusting
- Lead by a Strong JP

©Sarah Heath, Ottawa, Canada, 2011

15

Findings – ‘Inefficient’ Court

- Emphasis on operational needs
- Adjournments are necessary and common
- Staff triage cases initially
- Adversarial
- Individualistic
- Lack of a strong leader

©Sarah Heath, Ottawa, Canada, 2011

16

Attitudes & Views

'Efficient' Court

Crown:

"If the accused was going to be released ... you don't want delays, you want that to be as soon as possible".

'Inefficient' Court

Defence Counsel:

"The... Justice of the Peace has a line up of cases to hear, and... some are going to another day [so], they go to another day... they just want the cases done".

©Sarah Heath, Ottawa, Canada, 2011

17

Attitudes & Views

'Efficient' Court

Defence Counsel:

"If ... we have a matter that is to proceed as a bail hearing and we have sureties all present we can do it right away. Often we are ready to proceed on the same day".

'Inefficient' Court

Defence Counsel:

"The first appearance, it might be obvious so you wouldn't need a reason, but the reason you have adjournments ... is so that the court can be appraised of the status of the case."

©Sarah Heath, Ottawa, Canada, 2011

18

Practices & Incentives

'Efficient' Court

Defence Counsel:

"Duty Counsel wouldn't keep someone [inside] ... she wouldn't adjourn matters for the purpose of having counsel"

'Inefficient' Court

Duty Counsel:

"I've always viewed the function of Duty Counsel as a triage"

Defence Counsel:

"It's pretty much common practice for Duty Counsel to say we need to put this over for tomorrow because his lawyer's not available today"

©Sarah Heath, Ottawa, Canada, 2011

19

Practices & Incentives

'Efficient' Court

Crown:

"We will try to put a plan in place and if that cannot be done, then we adjourn for the next day".

Justice of the Peace:

"There's no other reason for an adjournment, it has to be case preparation, and I won't let anything else go through".

'Inefficient' Court

Defence Counsel:

"When they're [the accused] in custody, the Crowns are loving it, so ... in the initial 6-8 normal period of appearances, they're all with you for that".

©Sarah Heath, Ottawa, Canada, 2011

20

Workgroup Relationships

'Efficient' Court

Crown:

"The Crown takes just as much part in the planning session ... as Duty Counsel.... we sort of guide Duty Counsel as to what we would like to see".

'Inefficient' Court

Defence Counsel:

"Sometimes the Crown will say no this is crazy and I'll put my hand right over the mic again, and say remember you promised me if I did this you would do that ... you know what I mean".

©Sarah Heath, Ottawa, Canada, 2011

21

Workgroup Relationships

'Efficient' Court

Crown:

"The JP is probably in a better position to sort of track and ask those questions ... because it's his court, he's the boss, he's accountable, ...".

'Inefficient' Court

Justice of the Peace:

"If both counsel and Crown have agreed to the adjournment ... you can't force the person to have a bail hearing, I mean it's their choice (laughing) no I'm sorry, we're going to run your bail hearing today (laughing)".

©Sarah Heath, Ottawa, Canada, 2011

22

Solutions

- Strategies to Promote an Efficient Court Culture
 - Time standards
 - Set practices
 - Incentives to work together

©Sarah Heath, Ottawa, Canada, 2011

23

Questions??

Sarah Heath, M.A.
Sarah.heath@uottawa.ca

©Sarah Heath, Ottawa, Canada, 2011

24