

WORKING DRAFT

Representation Pathways: Efficiency for the Courts and Better Outcomes
For the Accused in the Ontario Court of Justice¹

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Overview

This paper provides a first-of-its-kind empirical look at the impact of representation for accused persons on criminal court efficiencies and outcomes. In particular, using an extensive, multi-year court data set provided by the Ontario Court of Justice and the Ontario Ministry of the Attorney General, this paper explores several process and outcome differences between represented, partially represented and non-represented accused persons for over 2 million disposed cases and over 17.5 million separate appearances between 2011 and 2022.

Given the complexity and seriousness of different types of criminal cases, the range of possible procedural steps and needs, and the varying level of detail and nuance within current criminal court data, it is not possible to make perfect empirical conclusions about the absolute benefits of representation in different types of criminal matters in terms of court efficiencies and outcomes. However, although the data and findings in this study are complex and do not provide a complete picture of the criminal justice process, the results of this analysis indicate four overall general conclusions, which are briefly set out below, and further discussed in this article.

¹ We are grateful for the generous assistance and extensive data set from the Ontario Court of Justice and the Ontario Ministry of the Attorney General, and for computer analysis and advice on data analysis from the Institute for Social Research (ISR), York University.

- This research demonstrates empirically the significant rise of unrepresented accused in the criminal justice system over the period of this study. Further research might identify factors that might have effected changes in the percentage of appearances at which accused were unrepresented as the trend increased. These would include factors such as police charging practices, changes in provincial criminal justice policy, and changes in court administration policies and practices. What happened during the COVID pandemic is the most obvious factor explaining the increase beginning in 2020.
- The results of this research indicate that any appearance – no matter what kind of appearance – at which the accused is unrepresented is associated with more appearances and days to disposition, compared with appearances at which the accused receives assistance from duty counsel. However, there is not the same result when comparing unrepresented appearances with appearances with assistance from retained counsel. The reason for this difference, involving appearances with duty counsel as compared to retained counsel, seems to be explained in terms of case complexity.
- In order to explore this issue of case complexity, a more detailed analysis based on representation pathways complements this analysis, showing that median and mean number of appearances and days to disposition are greater when no representation at some appearances is combined with representation at some appearances by either duty counsel, retained counsel, or both. Although the data does not distinguish between privately retained counsel and counsel provided under a legal aid certificate. These findings tend to support the benefit of representation. As such, these results also suggest that exploring ways to increase representation in the courts – typically including increased legal aid for better access to representation – will have a positive effect on court efficiency.²
- The results of this research support the proposition that, generally, legal representation improves outcomes for the accused. However, this is not universal. There is a subset of outcomes for which the odds of obtaining certain outcomes are improved by not being represented. This is apparently the result of a complex set of factors including police charging, the timing of entering a plea, and the timing of engaging a lawyer. There are complex patterns of behaviour of accused persons depending on the circumstances surrounding the alleged offence and the decisions taken by the prosecution and the judge. None of these important factors driving the trajectory of cases can be studied with the data available to this research. However, for a significant group of outcomes, including acquittals, discharges, dismissals, etc., the data indicate a positive impact of legal representation on outcomes.

² See e.g. Lisa Moore & Trevor CW Farrow, *Investing in Justice: A Literature Review in Support of the Case for Improved Access* (Toronto: Canadian Forum on Civil Justice, 2019). See also Marcus Pratt & Trevor CW Farrow, “Exploring the Importance of Criminal Legal Aid: A Canadian Perspective” (2023) 39 Windsor Yearbook of Access to Justice.

Background

The presence of unrepresented accused in the criminal courts is typically not a good situation, either for the efficient functioning of the courts or for the well-being of the people attempting to navigate the justice system. The criminal courts are widely acknowledged to be no friendly place for defendants who are not represented by a lawyer. For a variety of procedural and substantive reasons, court processes are complex, designed to provide due process in the challenging world of adversarial justice. With the exception of specialty courts, regular criminal courts are still generally designed by and for legal professionals and are typically not people-friendly places for unrepresented accused. There is some qualitative evidence from other sources for the value of representation for individuals. For example, according to one respondent participating in a study that examined the use of public legal education material to help people without a lawyer represent themselves in criminal court:

No one should have to defend themselves. The pamphlets should emphasize attempts to get a lawyer. The pamphlets were easy to understand and prepared me well to anticipate what would happen. The pamphlets gave a false sense of security. You think you can do it on your own but you can't.³

The challenging experience of individuals appearing in court without legal representation is regularly echoed by judges who sit in court every day. For example, according to one judge commenting on the disadvantage of people without legal training in the adversarial court system:

Most of them don't have a clue. They don't understand how a trial is conducted. They don't understand what things are relevant in relation to the charges they are facing. They don't have the advocacy skills and who's to blame them? A lot of them are poorly educated and people who are on the margins. Even people who have been generally more fortunate and who are better educated lack advocacy skills. They don't know how to ask questions. They don't know what questions to ask.⁴

Although significant efforts continue to be made to simplify court processes, these statements continue to be reflective of the long-held experiences of unrepresented accused persons as well as judges and court staff.⁵

This Study and the Data

³ Ab Currie and Carole McEown, *Assisted Self-Representation in Criminal Legal Aid: An Experiment in Limited Service Delivery*, Department of Justice Canada, Ottawa, 1998 at 16.

⁴ Ab Currie, *Unrepresented Accused in Canadian Criminal Courts*, Department of Justice, Ottawa, 2008 at 2.

⁵ See earlier Trevor CW Farrow *et al*, *Addressing the Needs of Self-Represented Litigants in the Canadian Justice System*, A White Paper Prepared for the Association of Canadian Court Administrators (Toronto and Edmonton, 27 March 2012).

This study examines two main issues in relation to representation for accused persons in criminal courts: the impact of representation on court efficiency, and on outcomes for accused persons. This analysis is based on data provided by the Ontario Court of Justice and the Ontario Ministry of the Attorney General. The data set contains 2,002,306 disposed cases accounting for 17,622,670 separate appearances between 2011 and 2022 from the Ontario Court of Justice.

By way of brief background, the Ontario Court of Justice is one of the three primary Courts in Ontario: the Ontario Court of Justice, the Superior Court of Justice, and the Court of Appeal for Ontario.⁶ The Ontario Court of Justice has jurisdiction over specific criminal, family, youth, and provincial offences matters. According to the Ontario Court of Justice's website, the "judges and the justices of the peace of the Court preside over adult criminal, youth criminal, family law, child welfare, and provincial offences matters."⁷

The structure of the data file is multilevel.⁸ Level one is the appearance, and level two is the disposed case, with appearances nested within disposed cases. The unit of analysis is the appearance, not persons and so the analysis is expressed in terms of the percentage of appearances. The data can be analysed in terms of all appearances or of final appearances. Logically, there can be only one final appearance for each disposed case so analysis based on final appearances represents disposed cases. Although not technically correct, a disposed case can be generally understood as representing an individual.

The Representation Variable in the Court Data

Legal aid has traditionally been considered a mainstay of access to criminal justice.⁹ The primary objective of this work is to explore arguments for increased funding for legal aid. The original representation variable in this data set distinguishes appearances at which accused were not represented, were represented by duty counsel (which is a legal aid service) and represented by retained counsel. The retained counsel category includes privately retained counsel and counsel provided under a legal aid certificate. In the data set for this study, it was not possible to distinguish between privately retained counsel and counsel provided through legal aid. The services provided by a lawyer working under a legal aid certificate can be assumed to be equal to the services provided by a privately retained lawyer in terms of the quality of service and robust advocacy on behalf of the client. The views of accused persons on the fairness of legal proceedings, due process and quality of service are beyond the scope of this study.

⁶ For background information, see Ontario Courts, online: <<https://www.ontariocourts.ca/>>. See further the *Courts of Justice Act*, RSO 1990, c C43.

⁷ See Ontario Court of Justice, "What we do", online: <<https://www.ontariocourts.ca/ocj/>>.

⁸ To assure a high level of security for data storage, the data set was stored at the ISR. Access to the data was only available by using a computer on-site at ISR. Data structuring and computer analysis were carried out by a statistician at ISR.

⁹ Richard Young and David Wall (eds), *Access to Criminal Justice, Legal Aid Lawyers and the Defence of Liberty*, Blackstone Press, London, 1996; see also Marcus Pratt & Trevor CW Farrow, *Exploring the Importance of Criminal Legal Aid: A Canadian Perspective*, Windsor Yearbook of Access to Justice, Vol. 39, 2023.

In a later part of the analysis, the original representation variable is recoded to represent disposed cases at which there was no representation at any appearances, representation at some appearances, and represented at all appearances. The representation at some and all appearances are further disaggregated to produce seven categories, which reflect representation pathways. The results achieved by using the two representation variables are complementary.

Unrepresented Accused in the Ontario Court of Justice

Appearances at which defendants were unrepresented increased considerably over the period from 2011 to 2022. Based on 17,622,670 separate appearances over the 12-year period, accused persons were unrepresented at 10.4% of appearances, representing 1,830,774 appearances. Accused were represented by duty counsel¹⁰ at 37.1% of all appearances, which is equivalent to 6,532,998 appearances. In 52.5% of all appearances, or 9,258,988 appearances, accused were represented by retained counsel.¹¹

Based on final appearances only, at the 2,002,306 disposed cases over the 12-year period, accused persons were unrepresented at 10.1% of final appearances, or 202,676 appearances. Accused were represented by duty counsel at 33.0% of final appearances, or 660,092 appearances. In 56.9% of final appearances, or 1,139,505 appearances, accused were represented by retained counsel.

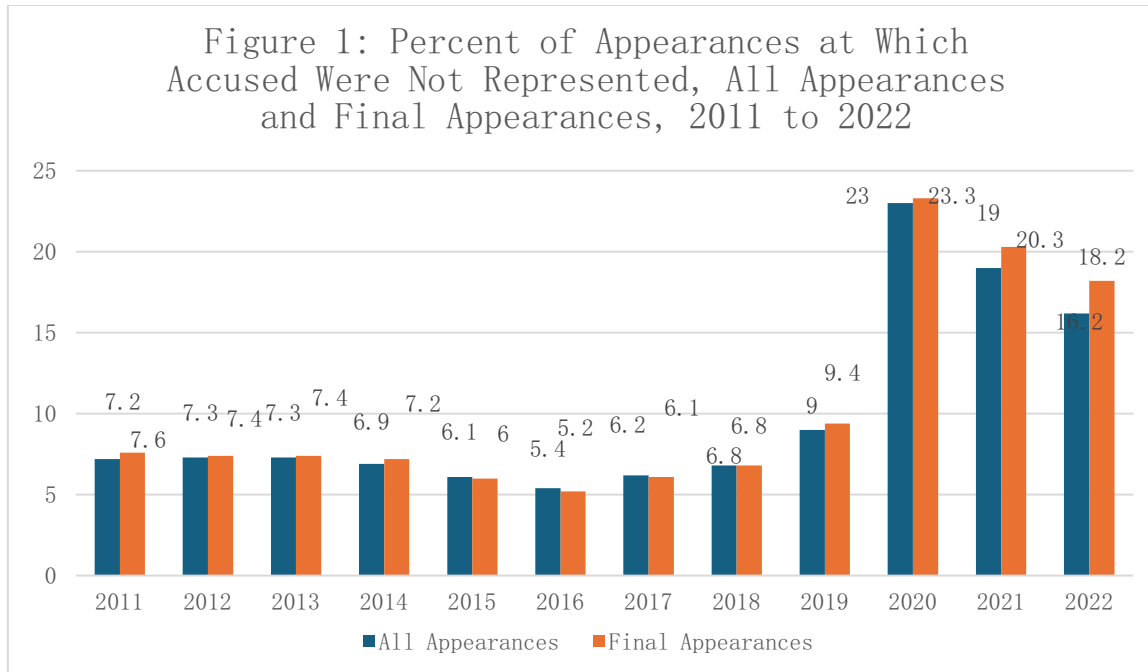
The percentage distributions based on all appearances and final appearances are similar. Analysis on all appearances shows that on average over the 12-year period, accused were not represented at 10.4% of appearances. Based on final appearances only, accused were not represented at 10.1% of appearances. In terms of absolute numbers, over the 12-year period, there were over 1.8 million appearances at which accused were unrepresented. Importantly, there were over 202,000 final appearances at which an outcome was determined, at which the accused person was not represented.

Put differently, most accused persons appearing in Ontario's Court of Justice between 2011 and 2022 were represented by retained counsel, about a third of accused persons were represented by duty counsel, and approximately 1 out of every 10 accused persons was unrepresented.

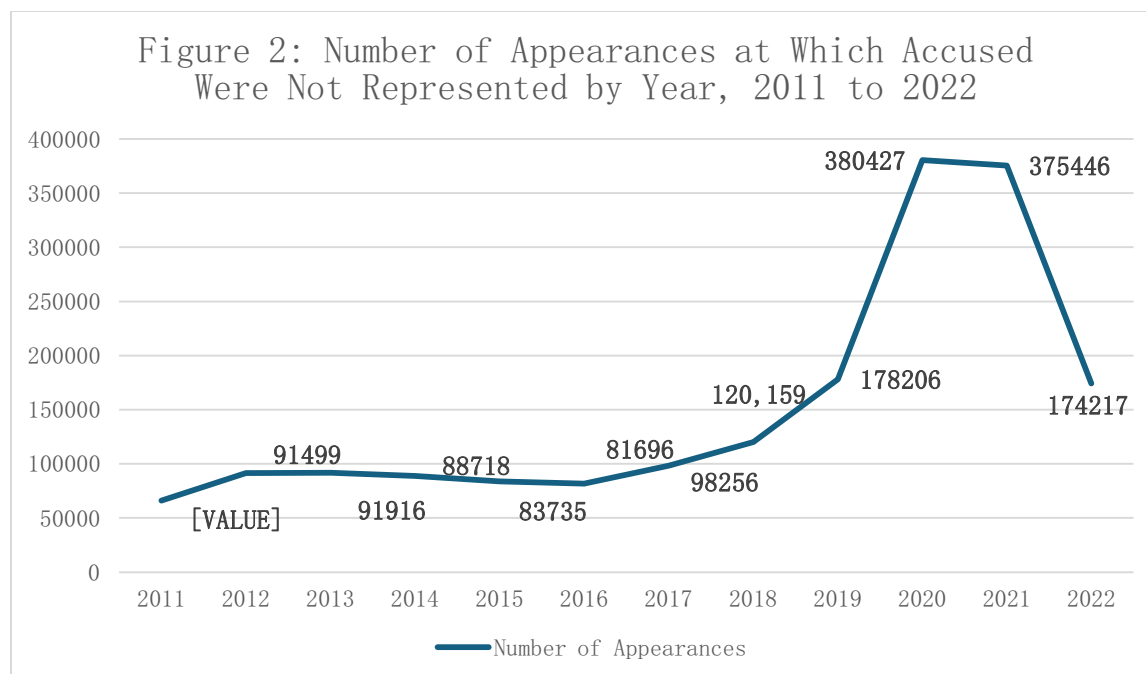
It is worth special consideration that many accused persons are unrepresented at final appearances at which outcomes and sentencing occur.

¹⁰ Duty counsel are private bar lawyers retained by Legal Aid Ontario to assist unrepresented accused.

¹¹ As mentioned above, the retained counsel category combines privately retained counsel and counsel retained by means of legal aid certificates issued to private bar lawyers.



The number of appearances at which accused persons were unrepresented increased over time. Looking at the total of 1,830,774 appearances at which accused were unrepresented over the 12-year period, the number and percentage increased by 34.7% between 2011 and 2019. This represents a shift from 7.2% or 66,199 appearances in 2011 to 9.7% or 178,206 appearances in 2019. In 2020 and 2021 the number and percentage of all appearances at which accused were not represented increased dramatically. Appearances at which accused were unrepresented rose to 23.0% of all appearances (380,427 appearances) in 2020 and to 19.0% of all 1.8 million appearances (375,446 appearances) in 2021. This was likely a consequence of COVID restrictions. The percentage of appearances at which accused persons were unrepresented was lower in 2022 – 16.2% of all appearances (or 174,217 appearances) at which accused were unrepresented. However, the number of appearances at which the accused was not represented in 2022 was much higher than the 2019 level. The 2022 level is also higher than the total number of appearances at which accused persons were unrepresented from 2011 to 2016, reflecting a 125% increase from this period.



The Role of Legal Aid for Court Efficiency

Court efficiency is often cited as an important reason for providing legal aid. Beverly McLachlin, former Chief Justice of the Supreme Court of Canada and former Honourary Chair of the Action Committee on Access to Justice in Civil and Family Matters, writes that “legal aid is essential to the effective functioning of our justice system.”¹² Further, former Chief Justice McLachlin explains that, “cutting legal aid is short-sighted and may cost provincial governments more than providing legal aid...[wherein] more court days, the risk of aborted hearings, the risk of wrongful convictions may lead to more appeals and other procedures to remedy things gone wrong.”¹³

Court Efficiency I: Median and Mean Number of Appearances to Disposition

This section examines the median and mean number of appearances and days (minus bench warrant days) to disposition for appearances at which accused were unrepresented compared with representation by duty counsel or retained counsel. Table 1 shows this difference in appearances by mode of representation, comparing the median and mean number of appearances based on final appearances for disposed cases and for all appearances.¹⁴ Similarly, John McCamus’ A Blueprint for Publicly

¹² The Honourable Beverly McLachlin, Legal Aid: A Critically Important Part of our Justice System, Action Committee on Access to Justice in Civil and Family Matters Newsletter (originally published in the Lawyer’s Weekly, July 2019), October 2019.

¹³ *Ibid.*

¹⁴ The mean and the median are two different measures of central tendency. The median is the mid-point of a distribution. The mean is the average. When the distribution of data (observations of a particular variable) is symmetric, the mean and median will be the same. When the distribution of the data is

Funded Legal Services report identifies “the modernization and simplification of the administration of justice as an objective for a new regime of legal aid in Ontario.”¹⁵

Table 1: Median and Mean Number of Appearances by Representation Type, All Appearances and Final Appearances ¹⁶						
	Based on 2,002,306 Final Appearances (Disposed Cases)			Based on 17,622,670 Appearances		
	Median	Mean	Range	Median	Mean	Range*
Not Represented	4	6.9	1 - 212	5	7.8	1 - 4160
Represented by Duty Counsel	4	6.6	1 - 397	4	8.2	1 - 4090
Represented by Retained Counsel	8	10.4	1 - 374	8	10.4	1 - 4348
Types of Representation Combined	6	8.8	1 - 397	6	9.3	1 - 4348

*Range represents the lowest and highest values.

The data based on final appearances shows that the mean number of appearances is greater for appearances at which the accused is not represented compared with appearances at which representation is by duty counsel. The median number of appearances based on final appearances is the same. Based on all appearances the median number of appearances is greater for appearances at which there is no representation compared with representation by duty counsel. The mean number of appearances is lower for appearances at which there is no representation. The higher mean and median numbers of appearances for retained counsel may relate in part to the greater complexity of cases. The reasons why the mean and median number of appearances might be lower for duty counsel (relative to retained counsel) are uncertain. However, our tentative assessment of the data suggests that an increased deployment of duty counsel might reduce the number of appearances at which individuals are unrepresented in criminal court.

Most Serious Offence at Disposition

skewed to the right, as is the case with the number of appearances and number of days to disposition, the mean tends to be larger than the median. Medians and means can be calculated on the basis of disposed cases (n=2,002,306) or individual appearances (n=17,622,627), leading to somewhat different values of the medians and means. In some situations, the choice is a matter of taking a different perspective. In other situations, the choice depends on the question one wants to ask. Using medians and means rather than cutting the data into categories and using percentages is often advisable when the data are extremely skewed to the right as is typically the case with appearances and days to disposition in court data.

¹⁵ A Blueprint for Publicly Funded Legal Services: Report of the Ontario Legal Aid Review, vol 1, Government of Ontario, 1997, p 140.

¹⁶ Means and medians are used rather than percentages because of the extremely large range of observations and the large number occurring at the right tail of the data distribution.

The sections below examine the median and mean number of appearances for most serious offence at disposition and for outcomes. Table 2 shows the median and mean number of appearances for most serious offence, comparing the three original categories of representation: not represented, represented by duty counsel, and represented by retained counsel. Seven types of criminal offences are included in the data: (1) administration of justice¹⁷; (2) criminal code – traffic; (3) crimes against property¹⁸; (4) crimes against the person¹⁹; (5) federal statutes²⁰; (6) other criminal code offences²¹; and (7) provincial offences.²²

Comparing appearances at which accused were not represented with appearances at which duty counsel was present, the mean number of appearances are lower for duty counsel for three offence types: criminal code traffic, crimes against the person, and provincial offences. For federal statute offences, the median number of appearances at which duty counsel was present is also lower than the median number of appearances at which accused were not represented. Median number of appearances are the same for three offence types: administration of justice, crimes against property, and other criminal code offences. Comparing appearances at which retained counsel was present with appearances at which the accused were not represented or represented by duty counsel, median and mean numbers of appearances are higher for four of the seven offence types: administration of justice, criminal code traffic, crimes against the person, and provincial offences. Information on the average number of appearances at which litigants in a criminal case are not represented or represented by duty counsel is helpful for understanding access gaps in criminal law. It is also potentially helpful for understanding the types and level of resources that are needed for individuals and the legal system to engender fair and efficient criminal processes and proceedings.

Table 2: Median and Mean Number of Appearances to Disposition Comparing Types of Representation For Most Serious Offence at Disposition						
	Not Represented		Duty Counsel		Retained Counsel	
	Median	Mean	Median	Mean	Median	Mean

¹⁷ In Canadian law, administration of justice offences are a “specific type of violation of the law, mostly committed when pre-trial conditions or sentences from a previous conviction are disobeyed.” Government of Canada, “Getting Fair Outcomes for Victims in Canada’s Criminal Justice System” (Ottawa: Office of the Federal Ombudsman, 2017) at 1.

¹⁸ These include offences such as arson, vandalism, robbery, theft, and other offences.

¹⁹ These include offences such as sexual assault, robbery, assault, criminal harassment, and other offences.

²⁰ These include offences against Canadian federal statutes such as the Food and Drugs Act, Controlled Drugs and Substances Act, the Employment Insurance Act, and other federal statutes.

²¹ These include Criminal Code offences not included in other categories such as terrorism, firearms and weapons offences, offences against public order, and other offences.

²² These include offences under provincial law that can result in criminal charges such as impaired driving and some drug offences.

Administration of Justice	4	7.2	4	8.1	8	11.0
Criminal Code Traffic	4	6.4	3	5.8	6	11.2
Crimes Against Property	5	8.2	5	9.6	8	6.8
Crimes Against the Person	5	7.8	4	7.1	8	10.4
Federal Statutes	5	8.6	4	9.5	8	9.0
Other Criminal Code Offences	5	8.2	5	8.8	8	7.4
Provincial Offences	4	6.4	3	6.3	5	10.2
Total	5	7.1	4	8.2	8	10.4
N = 17,622,670						

Case Outcomes

A stronger pattern is evident for case outcomes. The data include information on seven types of case outcome: acquitted, committed for trial, discharged, dismissed, guilty, stayed, and withdrawn. Comparing appearances at which accused were represented by duty counsel and appearances at which they were not represented, the median and mean number of appearances to disposition were both lower for duty counsel for all outcomes except where the case outcome is guilty or withdrawn. For both of these outcome types, the mean was higher where the accused was represented by duty counsel. The median is the same for proceedings leading to an outcome of withdrawn. The mean and median number of appearances were higher for retained counsel for all outcomes.²³

Table 3: Median and Mean Number of Appearances by Selected Case Outcomes Comparing Types of Representation, All Appearances

	Not Represented		Duty Counsel		Retained Counsel	
	Median	Mean	Median	Mean	Median	Mean
Acquitted	6	8.9	5	7.6	8	10.4
Committed for Trial	7	10.4	6	8.8	9	11.6
Discharged	8	11.6	6	8.7	10	11.9
Dismissed	5	7.4	4	6.9	8	10.0
Guilty	5	8.3	4	8.6	8	10.7
Stayed	6	9.5	5	7.8	8	10.7
Withdrawn	4	7.0	4	7.8	7	10.0
Total	5	7.7	4	8.2	8	10.4
N= 17,622,670						

Median and Mean Number of Appearances to Disposition, Case Outcome and Most Serious Offence Combined

²³ Referring back to footnote 14, both median and mean values are presented because of the skewed distribution of the data. With highly skewed data, the mean will typically be smaller than the median. With data that are regularly distributed, the median and mean values will be closer.

The pattern suggesting a court efficiency advantage for duty counsel is strong for some combinations of case outcome and case type. Both the median and mean number of appearances to gain an acquittal in all major offence categories are higher for appearances at which accused are not represented compared with represented by duty counsel. The median and mean number of appearances are higher for retained counsel. The pattern of the number of appearances to disposition comparing the three types of representation is quite varied when examined for both most serious offence at disposition and outcome.

The detailed analysis combining outcomes and most serious offence at disposition produces 45 different points of comparison for the median and mean number of appearances and duration in days to disposition. Here the focus is on comparing unrepresented accused with the two other types of representation. The data are summarized in Table 4 below. The detailed data are presented in Appendix One.

Comparing not represented and duty counsel, in 23 out of 45 combinations, 51.1%, the median number of appearances to disposition is higher for unrepresented accused. The mean number of appearances is higher for the not represented group 28 out of 45 combinations, 62.2%. Comparing duty counsel with retained counsel, there are two combinations of outcome and most serious offence, 4.4%, in which the median number of appearances is greater for not represented compared with retained counsel. The mean number of appearances is greater for the not represented group in 4 out of 45 combinations, 8.9%. The large numbers of percentages in which the number of appearances is greater for not represented parties compared with accused represented by duty counsel calls attention to the potential problem of unrepresented accused for court efficiency. Although the percentages are much smaller, it is remarkable that there are even a few cases in which the number of appearances to disposition for unrepresented accused is even greater than for representation by retained counsel.

Table 4: Summary Table: Descriptive Patterns of Median and Mean Appearances by Types of Representation for Most Serious Offence at Disposition and Outcomes		
Acquitted		
Duty Counsel and Not Represented	Median	Number of appearances less for duty counsel than not represented for 5 of 6 offences Number of appearances the same for duty counsel than not represented for 1 of 6 offences ²⁴
	Mean	Number of appearances less for duty counsel than not represented for 6 of 6 offences
Retained Counsel and Not	Median	Number of appearances greater for retained counsel than not represented for 5 of 6 offences and the same in 1

²⁴For some outcomes; acquitted, committed for trial, stayed and discharged the data set includes 6 most serious offences. The data set reports 7 most serious offences for dismissals, guilty and withdrawals without any explanation for the difference.

Represented	Mean	Number of appearances greater for retained counsel than not represented for 6 of 6 offences
Retained Counsel and Duty Counsel	Median	Median number of appearances greater for retained counsel compared with duty counsel for all 6 offence types
	Mean	Mean number of appearances greater for retained counsel compared with duty counsel for all 6 offence types
Committed for Trial		
Duty Counsel and Not Represented	Median	Number of appearances less for duty counsel than not represented for 4 of 6 offences Number of appearances the same for duty counsel and not represented for 2 of 6 offences
	Mean	Number of appearances less for duty counsel than not represented for 6 of 6 offences
Retained Counsel and Not Represented	Median	Number of appearances greater for retained counsel than not represented for 6 of 6 offences
	Mean	Number of appearances greater for retained counsel than not represented for 4 of 6 offences and lower in 2 offence categories
Retained Counsel and Duty Counsel	Median	Median number of appearances is greater than duty counsel for all 6 offence types
	Mean	Mean number of appearances is greater than duty counsel for all 6 offence types
Stay of Proceedings		
Duty Counsel and Not Represented	Median	Median number of appearances is lower for duty counsel than not represented for 4 of 6 offences Number of appearances the same for duty counsel as not represented for 2 of 6 offences
	Mean	Mean number of appearances less for duty counsel than not represented for 6 of 6 offences
Retained Counsel and Not Represented	Median	Median number of appearances greater for retained counsel than not represented for 6 of 6 offences
	Mean	Mean number of appearances greater for retained counsel than not represented for 4 of 6 offences and lower for 2 of 6 offences
Retained Counsel and Duty Counsel	Median	Median number of appearances greater for retained counsel than not represented for 6 of 6 offences
	Mean	Mean number of appearances greater for retained counsel than not represented for 6 of 6 offences
Discharged		
Duty Counsel and Not Represented	Median	Median number of appearances higher for duty counsel than not represented for 1 of 6 offences, lower in 3 and the same in 2
	Mean	Mean number of appearances higher for duty counsel than not represented for 3 of 6 offences, lower in 2 and the same in

		1
Retained Counsel and Not Represented	Median	Median number of appearances greater for retained counsel than not represented for 3 of 6 offences, lower in 1 and the same in 2
	Mean	Mean number of appearances greater for retained counsel than not represented for 5 of 6 offences and lower in 1
Retained Counsel and Duty Counsel	Median	Median number of appearances greater for retained counsel in 5 of 6 offence types, lower in 1
	Mean	Mean number of appearances is greater for retained counsel in 4 offence types, the same in 1 and lower in 1 offence type
Charges Dismissed		
Duty Counsel and Not Represented	Median	Median number of appearances less for duty counsel than not represented for 3 of 7 offences, higher in 2 and the same in 2
	Mean	Mean number of appearances higher for duty counsel than not represented for 3 of 7 offences, lower in 3 and the same in 1
Retained Counsel and Not Represented	Median	Median number of appearances greater for retained counsel than not represented for 6 of 7 offences and the same in 1
	Mean	Mean number of appearances greater for retained counsel than not represented for 6 of 7 offences and the same in 1
Retained Counsel and Duty Counsel	Median	Median number of appearances is greater for retained counsel in 6 of 7 offence types, the same in 1
	Mean	Mean number of appearances is greater for retained counsel in 6 of 7 offence types, the same in 1
Guilty		
Duty Counsel and Not Represented	Median	Median number of appearances less for duty counsel than not represented for 3 of 7 offences and the same in 4 offences
	Mean	Mean number of appearances less for duty counsel than not represented for 3 of 7 offences and higher in 4
Retained Counsel and Not Represented	Median	Median number of appearances greater for retained counsel than not represented for 7 of 7 offences
	Mean	Mean number of appearances greater for retained counsel than not represented for 7 of 7 offences
Retained Counsel and Duty Counsel	Median	Median number of appearances greater for retained counsel in all 7 offence types
	Mean	Mean number of appearances greater for retained counsel in 6 of 7 offence types and lower in 1
Charges Withdrawn		
Duty Counsel and Not Represented	Median	Median number of appearances less for duty counsel than not represented for 2 of 7 offences and the same in 5
	Mean	Mean number of appearances higher in 4 and lower in 3
Retained Counsel and Not Represented	Median	Median number of appearances greater for retained counsel than not represented for 6 of 7 offences and lower in 1
	Mean	Mean number of appearances greater for retained counsel than not represented for 6 of 7 offences and the same in 1

Retained Counsel and Duty Counsel	Median	Median number of appearances is greater for retained counsel compared with not represented for all 7 offence types
	Mean	Mean number of appearances is greater than duty counsel for all 7 offence types

The median and mean number of appearances to disposition is consistently lower for those appearances in which the accused were represented by duty counsel compared with appearances where the accused is not represented for three specific outcomes: acquittals, committed for trial, and stays of proceedings. By comparison, retained counsel is associated with larger numbers of appearances to achieve those outcomes. The median and mean numbers of appearances are lower for duty counsel compared with accused not represented at which the accused achieves other outcomes. For further data details, see Appendix One.

Court Efficiency II: Median and Mean Number of Days (Minus Bench Warrant Days) to Disposition

The duration to disposition has been a focus of some previous work. In an early Canadian study, James Wilkins used a much smaller sample from Toronto courts compared with this study and a different approach to the analysis.²⁵ He found that the percentages of unrepresented accused with cases disposed in a day and within a week were lower for unrepresented accused compared with duty counsel. A lower percentage represented by duty counsel were disposed in approximately five weeks compared with cases in which accused were not represented. These results are somewhat similar to the results presented below but are not comparable.²⁶

A similar pattern appears comparing the three modes of representation in terms of duration to disposition as with the number of appearances to disposition. Based on final appearances, the median and mean number of days to disposition are higher where there is no representation compared with appearances where representation is by duty counsel. For the analysis based on all appearances the median number of days is higher when the accused was not represented compared with appearances at which representation was by duty counsel, but the mean is the same.

Table 6: Median and Mean Number of Days to Disposition (Minus Bench Warrant days) by Representation Type, All Appearances and Final Appearances						
	Based on 2,002,306 Final Appearances (Disposed Cases)			Based on All 17,622,670 Appearances		
	Median	Mean	Range	Median	Mean	Range

²⁵ James L. Wilkins, *Legal Aid in the Criminal courts*, University of Toronto Press, 1975.

²⁶ James L. Wilkins, *Legal Aid in the Criminal courts*, University of Toronto Press, 1975, p 101.

Not Represented	107	162.6	1 - 212	230	283.0	1 - 4160
Represented by Duty Counsel	76	123.0	1 - 397	197	283.0	1 - 4090
Represented by Retained Counsel	162	213.6	1 - 374	269	322.1	1 - 4348
Types of Representation Combined	123	178.6	1 - 397	238	294.3	1 - 4348

Time to Disposition (days minus bench warrant days): Most Serious Offence and Outcome

This section presents the analysis for a second measure of court efficiency, namely duration in days to disposition for most serious offence and case outcome.

Most Serious Offence

Comparing appearances at which the accused was not represented with appearances at which the accused was represented by duty counsel, the median number of days was lower for appearances at which the accused was represented by duty counsel in all offence types except provincial offences, where it was the same. The mean number of days was higher for appearances at which representation was by duty counsel for criminal code traffic offences only. The median and mean number of days to disposition were higher for retained counsel than for both unrepresented accused and duty counsel for all offence types.

Table 7: Mean and Median Length of time to Disposition in Days Minus Bench Warrant Days for Type of Representation and Offence Types

	Not Represented		Duty Counsel		Retained Counsel	
	Median	Mean	Median	Mean	Median	Mean
Administration of Justice	181	234.2	149	212.1	209	261.0
Criminal Code Traffic	296	294.7	271	328.1	354	400.4
Crimes Against Property	214	268.3	182	256.6	245	400.1
Crimes Against the Person	272	316.7	231	276.3	295	341.4
Federal Statutes	238	292.3	224	288.6	304	353.5
Other Criminal Code	253	307.0	225	278.3	299	353.5
Provincial Offences	328	353.4	328	350.0	342	382.8
N = 2,022,306						

Outcomes

For every outcome the mean and median number of days to disposition is higher for appearances at which accused are unrepresented compared with appearances at which

representation is by duty counsel. Comparing retained counsel with the other modes of representation, the number of days is higher for all outcomes except committal for trial and discharges for which the mean number is lower than appearances at which accused were unrepresented. The median number of days that resulted in a discharge was also higher for accused who were not represented than accused who had retained counsel.

Table 8: Median and Mean Length of time to Disposition in Days Minus Bench Warrant Days for Type of Representation and Case Outcome						
	Not Represented		Duty Counsel		Retained Counsel	
	Median	Mean	Median	Mean	Median	Mean
Acquitted	440	470.1	397	437.1	461	500.3
Committed for Trial	369	405.0	357	381.0	373	401.3
Discharged	427	434.6	356	384.6	387	413.4
Dismissed	389	416.4	372	407.0	431	472.6
Guilty	217	273.8	170	239.3	247	305.5
Withdrawn	232	281.4	212	266.8	273	322.7
Stayed	286	343.6	258	303.4	344	394.6
N = 2,002,306						

Median and Mean Days to Disposition (Minus Bench Warrant Days) by Most Serious Offence and Outcome Combined Comparing Type of Representation

The detailed analysis combining outcomes and most serious offence at disposition also allows 45 different points of comparison for the median and mean number of duration in days to disposition. Similar to the analysis above focusing on median and mean numbers of appearances, the focus in this section is on comparing unrepresented accused with the two other types of representation. Comparing not represented and duty counsel, in 35 out of 45 combinations, 77.8%, the median number of days to disposition is higher for unrepresented accused. The mean number of appearances is higher for the not represented group 37 out of 45 combinations, 82.2%. Comparing duty counsel with retained counsel, there are 7 out of 45 combinations of outcome and most serious offence, 15.6%, in which the median number of days to disposition is greater for not represented compared with retained counsel. The mean number of days is greater for the not represented group in 9 out of 45 combinations, 20.0%. Dismissals is the one outcome showing the shortest duration to disposition for unrepresented accused, compared with both duty counsel and retained counsel. Similar to the analysis of median and mean numbers of appearances to disposition, the large number of percentages in which the durations are greater for not represented parties compared with accused represented by duty counsel signals the potential problem of unrepresented accused for court efficiency. The percentages, 15.6% and 20.0% for the

median and mean days to disposition for which unrepresented accused exceeds retained counsel are larger than similar comparisons for the number of appearances to disposition, 4.4%, for the median and 8.9% for the mean.

Table 9 summarizes the detailed data on duration to disposition from the foregoing tables. The detailed data are presented in Appendix Two.

Table 9: Summary Table: Descriptive Patterns of Median and Mean Duration to Disposition by Types of Representation for Most Serious Offence at Disposition and Outcomes		
Acquitted		
Duty Counsel and Not Represented	Median	Median number of days less for duty counsel than not represented for 6 of 6 offences
	Mean	Mean Number of days to disposition is less for duty counsel compared with not represented for 5 of 6 offences and greater for 1 of 6 offences
Retained Counsel and Not Represented	Median	Median number of days is greater for retained counsel than not represented for 5 of 6 offences and less for 1 of 6 offences
	Mean	Mean number of days to disposition is greater for retained counsel than not represented for 5 of 6 offences and lower in 1
Retained Counsel and Duty Counsel	Median	Median number greater for retained counsel compared with duty counsel for 5 of 6 offence types and the same for 1
	Mean	Mean number greater for retained counsel compared with duty counsel for all 6 offence types
Committed for Trial		
Duty Counsel and Not Represented	Median	Median number of days is lower for duty counsel than not represented for 6 of 6 offences
	Mean	Mean number of days is lower for duty counsel than not represented for 6 of 6 offences
Retained Counsel and Not Represented	Median	Median number of days is lower for retained counsel than not represented for 5 of 6 offences and higher in 1
	Mean	Mean number of days is lower for retained counsel than not represented for 5 of 6 offences and higher in 1
Retained Counsel and Duty Counsel	Median	Median number of days is higher for retained counsel than duty counsel for 4 of 6 offences and lower in 2
	Mean	Mean number of days is higher for retained counsel than duty counsel for 5 of 6 offences and lower in 1

Stay of Proceedings		
Duty Counsel and Not Represented	Median	Median number of days is lower for duty counsel than not represented for 5 of 6 offences and higher in 1
	Mean	Mean number of days for a stay of proceedings is lower for duty counsel than not represented for all 6 of 6 offences
Retained Counsel and Not Represented	Median	Median number of days is greater for retained counsel than not represented for 6 of 6 offences
	Mean	Mean number of days is greater for retained counsel than not represented for 6 of 6 offences
Retained Counsel and Duty Counsel	Median	Median number of days is greater for retained counsel than not represented for 6 of 6 offences
	Mean	Mean number of days is greater for retained counsel than not represented for 6 of 6 offences
Discharged		
Duty Counsel and Not Represented	Median	Median number of days is less for duty counsel than not represented for 4 of 5 offences and greater in 1
	Mean	Mean number of days is less for duty counsel than not represented for 4 of 5 offences and greater in 1
Retained Counsel and Not Represented	Median	Median number of days is lower for retained counsel than not represented for 4 of 5 offences and higher in 1
	Mean	Mean number of days is lower for retained counsel than not represented for 3 offence categories and higher in 2
Retained Counsel and Duty Counsel	Median	Median number of days is lower for retained counsel in 4 offence categories and greater in 2
	Mean	Mean number of days is lower for retained counsel in 4 offence categories and greater in 2
Charges Dismissed		
Duty Counsel and Not Represented	Median	Median number of days is higher for duty counsel than not represented for 5 of 6 offences and lower in 1
	Mean	Mean number of days is higher for duty counsel than not represented for 3 of 6 offences and lower in 3
Retained Counsel and Not Represented	Median	Median number of days is greater for retained counsel than not represented for 5 of 7 offences and lower in 2
	Mean	Mean number of days is greater for retained counsel than not represented for 6 of 7 offences and lower in 1
Retained Counsel and Duty Counsel	Median	Median number of days is greater for retained counsel in 6 offence categories
	Mean	Mean number of days is greater for retained counsel in 6 offence categories
Guilty		
Duty	Median	Median number of days is less for duty counsel than not

Counsel and Not Represented		represented for all 7 of 7 offences
	Mean	Mean number of days less for duty counsel than not represented for all 7 of 7 offences
Retained Counsel and Not Represented	Median	Median number of days is greater for retained counsel than not represented for 7 of 7 offences
	Mean	Mean number of days is greater for retained counsel than not represented for 6 of 7 offences and lower in 1
Retained Counsel and Duty Counsel	Median	Median number of days is greater for retained counsel in all 7 offence categories
	Mean	Mean number of days is greater for retained counsel in all 7 offence categories
Charges Withdrawn		
Duty Counsel and Not Represented	Median	Median number of days is lower for duty counsel than not represented for all 7 of 7 offences
	Mean	Mean number of days is lower for duty counsel than not represented for all 7 of 7 offences
Retained Counsel and Not Represented	Median	Median number of appearances is greater for retained counsel than not represented for 6 of 7 offences and lower for 1 of 7 offences
	Mean	Mean number of days is greater for retained counsel than not represented for all 7 of 7 offences
Retained Counsel and Duty Counsel	Median	Median number of days is greater for retained counsel in 6 offence categories and the same in 1
	Mean	Mean number of days is greater for retained counsel in all 7 offence categories

Court Efficiency III: Time Between Appearances

This section of the analysis shows the mean and median length of days between appearances. The data in Table 10 show that the mean and median length of time between appearances is greatest for appearances at which the accused is not represented. This is the case for every increase in appearance order. The length of time between appearances decreases as appearance order increases but only by about 31% between first to second and twelfth and higher appearance orders. The length of time (number of days) between appearance orders is consistently lower for appearances at which duty counsel is the form of representation at all appearance orders. The median and mean lengths of time between appearances when retained counsel is the form of representation is higher than appearances at which the accused is not represented and higher than appearances at which accused are represented by duty counsel.

Table 10: Mean and Median Number of Days Between Appearances by Type of

Representation						
	Not Represented		Represented by Duty Counsel		Represented by Retained Counsel	
From	Mean	Median	Mean	Median	Mean	Median
1 st to 2 nd	40.6	28	20.5	14	22.4	20
2 nd to 3 rd	35.7	28	20.9	14	22.6	20
3 rd to 4 th	34.0	27	21.1	14	23.4	20
4 th to 5 th	33.6	25	20.8	14	23.9	20
5 th to 6 th	33.7	25	20.8	14	24.4	20
6 th to 7 th	32.9	23	20.4	14	24.5	19
7 th to 8 th	32.6	22	20.2	14	24.5	9
8 th to 9 th	33.1	22	19.8	14	24.3	18
9 th to 10 th	32.6	21	19.6	14	24.1	17
10 th to 11 th	32.1	21	19.4	14	24.0	16
11 th to 12 th and over	27.9	18	16.6	8	20.7	14
Total	30.3	21	18.2	11	21.9	14
N = 17,622,670						

Representation Pathways: Another Perspective on Appearances and Duration to Disposition and Court Efficiency

The analysis to this point has been carried out using the original representation variable in the data set; not represented, represented by duty counsel and represented by retained counsel. The representation categories applied to each appearance. Using either 17,622,670 total appearances or 2,002,306 final appearances, computer analysis counted the number of appearances or days associated with each separate appearance and calculated median and mean values. This basic approach produced interesting results regarding the impact of unrepresented accused on court efficiency. These results were remarkably consistent when controlling for most serious offence at disposition and case outcome, providing confidence in the results.

However, employing the three representation categories, not represented, represented by duty counsel and represented by retained counsel in the initial analysis focusing on separate appearances has a flat or unidimensional quality. This approach to the analysis produced valuable and unique results. In reality, however, dispositions are arrived at by means of pathways that are combinations of the three basic forms of representation in the preceding analysis.²⁷

²⁷ In addition, using multivariate analysis, it was determined that the variables made available in the data set were explaining only a small amount of the variance in the two independent variables, about 15% for appearances and about 17% for days to disposition. In non-statistical language, this means that the analysis does not account for contextual factors in the real world of the courts producing these results. This multivariate analysis is shown in Appendix Three. Therefore, in the interest of caution in empirical

The basic form of the alternate representation variable is three categories; not represented at any appearances, represented at some appearances and represented at all appearances. This representation variable, Representation 2, captures different dimensions of representation compared with the more one-dimensional original representation variable in the data set, Representation 1.

Table 12: Percent of Appearances by Level of Representation	
Level of Representation	Percent
Not Represented at Any Appearances	5.1%
Represented at Some Appearances	23.3%
Represented at All Appearances	71.6%
N = 2,002,306	

The two following tables show the median and mean numbers of appearances and days to disposition for Representation 2.

Table 13. Mean and Median Number of Appearances to Disposition by Level of Representation			
Level of Representation	Mean Number of Appearances	Median Number of Appearances	Range
Not Represented at Any Appearances	3.4	2	1 to 212
Represented at Some Appearances	12.8	10	1 to 397
Represented at All Appearances	7.9	6	1 to 374
Total	8.8	6	1 to 397
N = 2,002,306			

Table 14: Mean and Median Length of Time to Disposition (days minus

research, it was decided to replicate the analysis by recoding the original representation variable. The original representation variable (not represented, represented by duty counsel and represented by retained counsel) does not take into account the fact that the disposed cases with more than one appearance could have multiple appearances with different types of representation. These more detailed representation pathways are examined in this section using the recoded representation variable.

bench warrant days) by Level of Representation			
Level of Representation	Mean Number of Days	Median Number of Days	Range
Not Represented at Any Appearances	100.4	65	1 to 4160
Represented at Some Appearances	243.6	192	1 to 3192
Represented at All Appearances	162.9	108	1 to 4348
Total	178.6	123	1 to 4348
N = 2,002,306			

The categories of the two representation variables are quite different. Therefore, a direct comparison between Representation 1 and Representation 2 is not possible. However, the “not represented at the appearance” category in Representation 1 and the “not represented at any appearances” category of Representation 2 are somewhat similar. Table 15 shows that the number of appearances in the not represented at the appearance category of Representation 1 is about half the number in the not at any appearances category in Representation 2. This probably means that about 100,000 appearances (100,406) have shifted to the represented at some category of Representation 2. That is where to look for a deeper understanding of the representation pathways and their impact on court efficiency.

Table 15: Comparison of Representation 1 and Representation 2 Variables		
Category	Number	Percent
Representation 1 (n = 2,002,306)		
Not Represented at the Appearance	202,676	10.1%
Represented by Duty Counsel	660,092	33.0%
Represented by Retained Counsel	1,139,505	56.9%
Representation 2 (n = 2,002,306)		
Not Represented at Any appearances	102,361	5.2%
Represented at Some Appearances	466,839	23.3%
Represented at All Appearances	1,433,106	71.5%

To more thoroughly explore the representation pathways, the Representation 2 variable has been further sub-divided into 7 separate categories.

- Not represented at any appearances
- Not represented at some appearances + represented by duty counsel at some appearances
- Not represented at some appearances + represented by retained counsel at some appearances
- Not represented at some appearances + represented by retained counsel at some appearances + represented by duty counsel at some appearances
- Represented at all appearances by duty counsel

- Represented at all appearances by retained counsel
- Represented at all appearances by mixed duty counsel and retained counsel

Table 16 shows the mean and median number of appearances to disposition for the 7 representation categories, representing different representation pathways.

Representation Pathway	Mean	Rank	Median	Rank
1 Not represented at any appearances	3.4	1	2	1
2 Not represented at some appearances + represented by duty counsel at some appearances	7.7	4	6	4
3 Not represented at some appearances + represented by retained counsel at some appearances	10.4	5	8	5
4 Not represented at some appearances + represented by retained counsel at some appearances + represented by duty counsel at some appearances	16.9	7	14	7
5 Represented at all appearances by duty counsel	4.7	2	3	2
6 Represented at all appearances by retained counsel	6.8	3	5	3
7 Represented at all appearances by mixed duty counsel and retained counsel	11.5	6	9	6

In terms of appearances to disposition the lowest median and mean numbers are for disposed cases in which the accused is not represented at any appearances. This is followed by the duty counsel pathway, in which all appearances have representation by duty counsel. These two pathways probably represent relatively simple cases or ones in which charges are dismissed early in the process. It is very interesting that the third lowest representation pathway is disposed cases in which representation at all appearances is by retained counsel, pathway 6.

The representation pathways that have the highest median and mean numbers of appearances to disposition are the ones in which representation at appearances is mixed. The pathway involving the highest mean and median number of appearances to disposition is number 4, not represented at some appearances, represented at some appearances by duty counsel and represented at some by retained counsel. The mean number of appearances is 16.9 and the median is 14. This is followed by the pathway defined by a mix of duty counsel and retained counsel, pathway number 7, with a mean number of appearances of 11.5 and a median of 9 appearances to disposition. The

pathway defined by not represented at some appearances and represented by retained counsel combination, number 3, with a mean number of 10.4 appearances to disposition and a median of 8 is the next highest ranked at number 5.

An interesting comparison is pathway 6, represented by retained counsel at all appearances and pathway 3, not represented at some appearances and represented at some appearances by retained counsel. The mean and median numbers are much higher for pathway number 3, at 10.4 for the mean and 8 for the median number of appearances, compared with pathway 6, representation by retained counsel at all appearances in which the mean number of appearances is 6.8 and the median is 5. When there is duty counsel representation at some appearances, the median and mean numbers of appearances and days to disposition increase.

Overall, the data suggest mixed representation pathways are not efficient for the courts. An approach to representation, or a legal aid system in which duty counsel is concentrated at the early stages and there is a quick transition to retained counsel, privately retained or paid by a legal aid certificate, might be the most advantageous approach to representation in terms of court efficiency and efficiency for the legal aid system.

Analysis of duration in days to disposition is consistent with the analysis of appearances. Table 17 shows the mean and median duration in number of days to disposition for the 7 representation categories, representing different representation pathways.

Table 17: Mean and Median Number of Days to Disposition, Representation 2				
Representation Pathway	Mean	Rank	Median	Rank
1 Not represented at any appearances	100.4	2	65	2
2 Not represented at some appearances + represented by duty counsel at some appearances	160.3	3	123	4
3 Not represented at some appearances + represented by retained counsel at some appearances	241.3	6	194	6
4 Not represented at some appearances + represented by retained counsel at some appearances + represented by duty counsel at some appearances	289.8	7	239	7
5 Represented at all appearances by duty counsel	95	1	59	1
6 Represented at all appearances by retained counsel	171.3	4	117	3
7 Represented at all appearances by mixed duty	216.3	5	170	5

counsel and retained counsel				
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Representation at all appearances by duty counsel has the lowest mean and median number of days to disposition, 95 and 59, respectively, followed by the not represented at any appearances pathway, 100.4 and 65. The ranks are reversed compared with appearances to disposition, with not represented at any appearances ranking second. Similar to the analysis based on appearances, it appears that mixed pathways are the least efficient in terms of days to disposition.

The representation pathway with the highest number of days to disposition is pathway number 4, not represented at some appearances, represented at some appearances by duty counsel and represented at some by retained counsel, mean and median number of days to disposition 289.8 and 239, respectively. Pathway number 3, not represented at some appearances and represented at some by retained counsel ranks just below in sixth position with the median number of days to disposition of 241.3 days and a mean of 194 days.

An interesting comparison is between representation pathway number 6, representation at all appearances by retained counsel, and pathway number 3, not represented at some appearances + represented at some appearances by retained counsel. The mean and median values for the representation pathway defined by representation at all appearances by retained counsel are 171.3 days and 117 days to disposition. The mean and median days to disposition are higher for representation pathway number 3, not represented at some appearances and represented at some appearances by retained counsel; the mean is 241.3 days and the median is 194 days. Similar to the analysis of appearances to disposition, the presence of duty counsel in the mix of these pathways produces higher mean and median days to disposition.

Mixed pathways tend to require longer durations to disposition. This supports the tentative conclusion based on mean and median number of appearances to disposition that early representation by duty counsel and then a quick transition to full representation by counsel of record might produce the greatest efficiency in terms of days to disposition.

The analysis presented in the foregoing section using Representation variable 2 is complementary to the analysis based on Representation variable 1. It is not a contradiction. The overall conclusion from the first analysis was that lack of representation at appearances is associated with higher median and mean values for both appearances and days to disposition. The analysis based on Representation variable 2 indicates that the increased median and mean number of appearances and days to disposition occurs most often in mixed representation pathways involving duty counsel.

The results between Representation 1 and 2 are similar. This can be shown by averaging the mean and median values in Representation variable 2 for mixed

representation pathways with no representation at some appearances and representation pathways in which there is representation at all appearances. The average of the mean values for representation pathways 1 to 4, all involving some appearances at which there was no representation is 9.6. The average of mean values for pathways 5, 6 and 7, each of those categories defined as representation at all appearances by duty counsel, retained counsel or a mix of the two is 7.6 appearances to disposition. The average median values reveal the same pattern. The average of the median values for the representation pathways 1 to 4, all involving appearances at which there was no representation at some appearances is 7.5 appearances to disposition. The average mean values for pathways 5, 6 and 7, each of those categories defined as representation at all appearances by duty counsel, retained counsel or a mix of the two is 5.7 appearances to disposition.

Table 18: The Average of Mean and Median Number of Appearances and Days to Disposition, Representation 2, Combining Representation Pathways 1 to 4 and 5 to 7				
	Appearances to Disposition		Days to Disposition	
	Average of Means	Average of Medians	Average of Means	Average of Medians
Representation Pathways Involving All or Some Appearances with no representation; Pathways 1 to 4	9.6	7.5	197.9	155.3
Representation Pathways Involving Representation at All Appearances; Pathways 5 to 7	7.6	5.7	160.9	115.3

Similarly, the average of the mean values for days to disposition for representation pathways 1 to 4, all involving days to disposition at which there was no representation, is 197.9. The average of the mean values for pathways 5, 6 and 7, each of those categories defined as representation at all appearances by duty counsel, retained counsel or a mix of the two is 160.9 days to disposition. The averages of median values reveal the same pattern. The average of the median values for the representation pathways 1 to 4, all involving appearances at which there was no representation is 155.3 days to disposition. The average mean values for pathways 5, 6 and 7, each of those categories defined as representation at all appearances by duty counsel, retained counsel or a mix of the two is 115.3 days to disposition. This supports the earlier analysis based on the Representation 1 variable demonstrating the greater mean and median number of appearances to disposition associated with appearances at which there is no representation.

Effect of Representation on Outcomes

In an article focusing primarily on legal aid and human rights, Ashworth discusses four reasons in support of legal aid: the complexity of the courts; the immense resources of the prosecution; the consequences of conviction; and the principle of equality.²⁸ Professor Ashworth's approach supports the proposition underlying this research that an important argument for legal aid is better outcomes for accused persons.

The analysis of outcomes continues to use the representation pathways discussed earlier for the analysis of court efficiency, comparing pairs of representation pathways. Odds ratios are used in this part of the analysis.²⁹ These calculations show the number of times a particular outcome is greater or less likely to occur comparing one representation pathway compared with another. The analysis indicates that people do receive more favourable outcomes in some cases when represented by counsel. The analysis also shows, however, that the odds of receiving an acquittal, a discharge or a dismissal of charges are all greater when represented compared with being unrepresented.

Table 11 shows three comparisons³⁰ using odds ratios: not represented at any appearances vs represented at all appearances by duty counsel; not represented at any appearances vs represented at all appearances by retained counsel; and represented by duty counsel at all appearances vs represented by retained counsel at all appearances. The three comparisons presented in this section are based on the alternate representation variable. They have been selected to be as similar as possible to the original representation variable that was used in the earlier analysis of median and mean appearances and days to disposition unrepresented.³¹

Table 19: Odds Ratios Comparing Outcomes for Different Types of Representation			
Outcome	Not Represented at Any Appearances / Represented at All Appearances	Not Represented at Any Appearances / Represented at All Appearances	Represented by Duty Counsel at All Appearances / Represented by Retained Counsel at All Appearances

²⁸ Andrew Ashworth, *Legal Aid, Human Rights and Criminal Justice* in Richard Young and David Wall (eds), *Access to Criminal Justice: Legal Aid Lawyers, Access to Justice and the Defence of Liberty*, Blackstone Press, London, 1996, pp 56-57.

²⁹ Odds ratios are explained in Appendix Three, where detailed odds ratios for outcome and offence type combined are presented.

³⁰ There are many possible comparisons. The alternate representation variable has seven categories allowing for 21 possible pairs that might be compared. The three pairs shown in this paper are consistent with the categories of the original representation variable in the data set.

³¹ The data are based on the recoded representation variable. The original representation variable, representation type 1, has three appearances-based categories: not represented at the appearance; represented by duty counsel; and represented by retained counsel. The recoded variable, representation type 2, groups disposed cases: not represented at any appearances; represented by duty counsel at all appearances; represented by retained counsel at all appearances; represented by either duty or retained counsel at all appearances; and represented by retained counsel at some appearances.

		by Duty Counsel	by Retained Counsel	Appearances
		Odds Ratios		
1.	Acquittal	1.0	4.6	4.6
2.	Discharge	1.7	13.4	7.8
3.	Dismissed	0.6	2.0	3.2
4.	Guilty	2.1	2.4	1.1
5.	Stay	1.2	0.8	0.6
6.	Withdrawal*	2.1	2.6	0.8
7.	Committal to Trial	1.1	8.9	8.3

*The odds ratios in this row have been reversed to show the number of times greater the odds favour not being represented.

Reading along the first row of Table 19, the odds of being acquitted are about even if represented at all appearances by duty counsel compared with not being represented at any appearances. The odds of an acquittal increase to 4.6 times greater when represented at all appearances by retained counsel compared with accused not represented at any appearances. Comparing duty counsel and retained counsel, the odds are about 4.6 times greater of an acquittal if the accused is represented at all appearances by retained counsel compared with being represented at all appearances by duty counsel. As explained in footnote 30 there are many other possible comparisons. A few are presented along with the data in Table 19. The odds of an acquittal are 4.208 times greater if represented at all appearances by a combination of duty and retained counsel compared with accused who are not represented at any appearances. Even being represented at some appearances is beneficial. The odds of an acquittal are 3.528 times greater if represented at some appearances by either retained counsel or duty counsel compared with not represented at any appearances.

Table 20: Odds Ratios Comparing Outcomes for Different Types of Representation		
Outcome	Not Represented at Any Appearances / Represented at All Appearances by Duty and Retained Counsel	Not Represented at Any Appearances / Represented Some Appearances by Duty or Retained Counsel
	Odds Ratios	
Acquittal	4.208	3.528

Turning to row two of Table 19, the odds of a discharge are 13.4 times greater if represented by retained counsel at all appearances compared with not represented at any appearances. The comparable odds ratio for a discharge if represented at all appearances by duty counsel is 1.7 times greater than if not represented at any appearances. Comparing retained counsel and duty counsel, the odds of a discharge are 7.9 times greater if represented at all appearances by retained counsel compared with represented at all appearances by duty counsel. If accused persons are

represented at all appearances by a combination of duty counsel and retained counsel the odds are 10.5 times greater of a discharge compared with not being represented at any appearances. Similar to the results for acquittals, being represented at some but not all appearances gives the accused an outcome advantage. The odds of a discharge are 5.2 times greater if represented at some appearances by duty counsel, retained counsel or by a combination of the two than if the accused is not represented at any appearances.

Table 21: Odds Ratios Comparing Outcomes for Different Types of Representation		
Outcome	Not Represented at Any Appearances / Represented at All Appearances by Duty and Retained Counsel	Not Represented at Any Appearances / Represented Some Appearances by Duty or Retained Counsel
	Odds Ratios	
Discharge	10.5	5.2

There is also an advantage to being represented with regard to dismissals. The odds of a dismissal are about 2.0 times greater if represented by retained counsel at all appearances compared with not represented at any appearances. On the other hand, the odds ratio for a dismissal if represented at all appearances by duty counsel is 0.662 times less than if not represented at any appearances. Comparing retained counsel and duty counsel, the odds of a dismissal are 3.2 times greater if represented at all appearances by retained counsel compared with represented at all appearances by duty counsel. Even if accused persons are represented at all appearances by a combination of duty counsel and retained counsel, the odds are 1.8 times greater of a dismissal compared with not being represented at any appearances. Similar to the results for acquittals and discharges, being represented at some but not all appearances gives the accused an outcome advantage. The odds of a dismissal are 1.4 times greater if represented at some appearances by duty counsel, retained counsel or by a combination of the two than if the accused is not represented at any appearances.

Table 22: Odds Ratios Comparing Outcomes for Different Types of Representation		
Outcome	Not Represented at Any Appearances / Represented at All Appearances by Duty and Retained Counsel	Not Represented at Any Appearances / Represented Some Appearances by Duty or Retained Counsel
	Odds Ratios	
Dismissal	1.8	1.4

The odds of a guilty outcome if represented at all appearances by duty counsel or retained counsel are similar. The odds of a guilty outcome are about 2.1 times greater if represented at all appearances by duty counsel than if not represented at any

appearances. The comparable odds ratio is about 2.4 times greater if represented at all appearances by retained counsel compared with duty counsel. Comparing retained counsel and duty counsel, the odds of a guilty outcome are about even, 1.1 times greater for retained counsel than duty counsel.

Table 23: Odds Ratios Comparing Outcomes for Different Types of Representation		
Outcome	Not Represented at Any Appearances / Represented at All Appearances by Duty and Retained Counsel	Not Represented at Any Appearances / Represented Some Appearances by Duty or Retained Counsel
	Odds Ratios	
Guilty	2.4	1.1

The odds of a stay of proceedings are about 1.2 times greater if represented at all appearances by duty counsel compared with not being represented at any appearances. However, the odds of a stay are 0.8 times less if the accused is represented by retained counsel at all appearances than if unrepresented at all appearances. This probably means that weak cases are dismissed early on with the assistance of duty counsel but less likely for cases that proceed further and for which representation is by retained counsel. Comparing retained counsel with duty counsel, the odds of a stay are 0.6 times less if represented at all appearances compared with represented at all appearances by duty counsel.

Table 24: Odds Ratios Comparing Outcomes for Different Types of Representation		
Outcome	Not Represented at Any Appearances / Represented at All Appearances by Duty and Retained Counsel	Not Represented at Any Appearances / Represented Some Appearances by Duty or Retained Counsel
	Odds Ratios	
Stay	0.8	0.6

Withdrawals of charges are one outcome for which it appears advantageous to be unrepresented. The odds of a withdrawal are about 2.1 times greater if the accused is not represented at any appearances than if represented by duty counsel at all appearances. The odds of a withdrawal are slightly greater in favour of no representation compared with representation by retained counsel. The odds of a withdrawal are about 2.6 times greater if the accused is not represented at any appearances than if represented at all appearances by retained counsel. On this issue, there appears to be a greater advantage to being not represented at any appearances as compared to being represented by a mix of duty and retained counsel at all appearances. The odds ratio for a withdrawal of charges is about 3.4 times greater if not represented, than represented at all appearances by a mix of duty and retained

counsel. There is also an advantage of being unrepresented at all appearances compared with being represented at only some appearances. The odds of a withdrawal are 2.7 times greater if not represented at any appearances compared with being represented at only some appearances.

Table 25: Odds Ratios Comparing Outcomes for Different Types of Representation		
Outcome	Not Represented at Any Appearances / Represented at All Appearances by Duty and Retained Counsel	Not Represented at Any Appearances / Represented Some Appearances by Duty or Retained Counsel
	Odds Ratios	
Withdrawal	3.4	2.7

The odds of a committal for trial are approximately 9.0 times greater if the accused is represented by retained counsel at all appearances compared with not being represented at any appearances. This suggests that, in this respect, the presence of retained counsel has an efficiency effect in terms of moving matters to trial more quickly. This compares with duty counsel in that the odds of committal are only 1.1 times greater than not being represented at any appearances. The odds of an outcome of committal to trial when represented at all appearances by retained counsel are about 8.3 times greater compared with accused represented at all appearances by duty counsel.

Table 26: Odds Ratios Comparing Outcomes for Different Types of Representation		
Outcome	Not Represented at Any Appearances / Represented at All Appearances by Retained Counsel	Not Represented at Any Appearances / Represented Some Appearances by Duty Counsel
	Odds Ratios	
Committal for Trial	9.0	1.1

The patterns revealed by the analysis of greater or lesser odds of different outcomes may reflect the multiple complexities of behaviour of accused persons and contextual factors that influence court proceedings and efficiencies. This may explain why the odds are greater for obtaining withdrawals of charges and stays of proceedings if not represented. On the other hand, having retained counsel produces an advantage for an acquittal or dismissal of charges, especially obtaining a discharge. People may appear unrepresented at one or more initial appearances while waiting for a legal aid certificate. People may assess the weakness or seriousness of the case against them before they retain a lawyer. They may then hire a lawyer after trying to resolve a case themselves unsuccessfully. These people may recognize that their position is weak and resolve it before retaining a lawyer. In other situations, the police sometimes cast a wide net and

initially overcharge. Charges may be laid on associates, friends or family members who are in the wrong place at the wrong time, unfortunately present in a location where the offence was committed or where illicit items such as drugs or weapons are found. People become attached to the main defendant without legal help and are eventually let go when the central person being charged pleads guilty. Many cases do not require a lawyer to resolve cases that are widely recognized to be typically diverted out of the system early without needing legal assistance. Factors such as these will diminish or alter the meaning of simple counts of unrepresented accused in the courts. As such, it is not possible to fully know the magnitude of the effects of these or other contextual factors on the unrepresented accused problem.

Discussion and Conclusions

Given the size and scope of the data analyzed in this study, the findings provide a unique window into the impact of representation in the context of some elements of court efficiencies and outcomes. In particular, this analysis provides evidence supporting the two traditional reasons supporting publicly funded legal aid: court efficiency; and better outcomes for individual defendants. This research establishes more conclusively and with much better and more recent data the extent of unrepresented accused and the benefits of representation for court efficiency and for more favourable outcomes for the accused.³² In summary:

- appearances at which there is no representation lead to greater inefficiency in the courts measured in terms of mean and median numbers of appearances and days to disposition;
- a greater deployment of duty counsel might reduce inefficiency in the courts;
- mixed representation pathways tend to result in more appearances and days to disposition; and
- legal representation, especially by retained counsel, results in better outcomes in most cases.

In terms of court efficiency, the results show that, compared with duty counsel, unrepresented accused have more appearances and longer durations in days to disposition. In addition, the number of days between appearances is longer for unrepresented accused than for accused represented by duty counsel or retained counsel. Cases in which the accused is represented by retained counsel are probably more complex, which likely explains at least in part the greater number of appearances and longer durations to disposition for those cases. The extent to which block fees mitigate this is uncertain. Nonetheless, it seems as if the greater deployment of duty

³² Earlier Canadian research was conducted decades ago. Ab Currie, *The Unmet Need for Criminal Legal Aid: A Summary of Research Results*, Department of Justice, Ottawa, 2003; Ab Currie, *The Nature and Extent of Unmet Need for Criminal Legal Aid in Canada*, *International Journal of the Legal Profession*, Vol. 11, No. 3, November 2004; Ab Currie, *Unrepresented Accused in Canadian Criminal Courts*, Department of Justice, 2009; Ab Currie, *Lives of Trouble: Criminal Offending and the Problems of Everyday Life*, International Legal Aid Group, Wellington, New Zealand, 2009. For a broader discussion of the issues, including a summary of the earlier research, see also Marcus Pratt & Trevor C.W. Farrow, *Exploring the Importance of Criminal Legal Aid*, *Windsor Yearbook of Access to Justice*, 39, 2023.

counsel would contribute to greater court efficiency. The part of the analysis based on representation pathways shows that median and mean appearances and days to disposition are greater for any combination of representation types where there are appearances in which accused are not represented.

In terms of outcomes, the court data available for this study cannot address the fairness or due process advantages of legal representation for people standing accused in the criminal courts. Criminal courts are very complex arenas in which the processes and outcomes are driven to a significant extent by the strategic behaviour of accused who may be unrepresented or represented by counsel for some or all of the appearances, by their lawyers, and by the prosecutors. However, the data does show that representation by legal counsel produces outcomes, such as stays and dismissals, which are likely in line with fair outcomes and due process expectations, and – from the perspective of those standing accused – are more favourable. Legal representation, especially by retained counsel, increases the odds of acquittals, dismissals and discharges.

We acknowledge that the data available for this study does not provide a detailed explanation or complete picture regarding the overall state or reality of criminal courts. Multivariate analysis of the variables available in the data set shows that data explain 15% to 17% of the variance in the number of appearances and durations. In non-statistical terms, this means that we are not capturing most of the context driving efficiency and outcomes in the courts (see further Appendix Four). Nonetheless, because of the complex, large data set, the analysis that we have provided is able to produce results that lead to more solid conclusions than previous research regarding the specific findings about representation, some elements of efficiency, and some elements of outcomes.

Further, there are other factors that are not taken into account by this research. For example, there are aspects to the arguments for greater funding for legal aid that are more open to qualitative analysis that cannot be pursued with the quantitative data employed here. Holistic forms of criminal defence intended to mitigate the root causes of criminal behaviour have been part of the discourse for decades. The more recent arguments encouraging people-centricity, placing the individual at the center of access to justice, which are becoming the norm in designing legal and related services. Within the long-standing, much broader and quickly expanding range of arguments for greater funding for legal aid, this analysis makes a contribution. By using this ground-breaking data set, which is more complex and extensive than has previously been available outside of government and court administration, the results show that legal representation, and by inference legal aid, will improve court efficiency and produce outcomes that are more favourable (and likely fairer) for the accused.

However, even with the authority of sound empirical research based on massive data, these are not the magic bullets that will open the doors to adequate funding for legal aid. Funding for legal aid has long been understood as having a strong ideological base. How much money is society prepared to spend on the poor, or on criminal justice? Funding decisions are in large measure political, made as a result of budget decisions

within government in an environment in which there are many competing demands and in which legal aid is often not a high political priority. Yet, as circumstances arise in which budget cuts are made, often during economic recessions as governments attempt to control expenditures, occasions will arise when essentially political arguments supported by good research will have a better chance of success in securing more funding for legal aid. This research stands as part of that growing body of empirical work, which continues to make the case for increased legal aid funding – not simply as a political preference, not just for better and more just processes and outcomes, but also as a sound economic investment.³³ Further work in this area, which should be supported and encouraged, is important for all of these reasons.

³³ See e.g. Lisa Moore & Trevor CW Farrow, *Investing in Justice: A Literature Review in Support of the Case for Improved Access* (Toronto: Canadian Forum on Civil Justice, 2019). See also Marcus Pratt & Trevor CW Farrow, “Exploring the Importance of Criminal Legal Aid: A Canadian Perspective” (2023) 39 Windsor Yearbook of Access to Justice.

Appendix One

Detailed Tables: Median and Mean Number of Appearances to Disposition by Most Serious Offence at Disposition and Outcome

Acquittal	Not Represented		Duty Counsel		Retained Counsel	
	Median	Mean	Media n	Mean	Median	Mean
Administration of Justice	6	8.8	5	8.2	8	9.8
Criminal Code Traffic	6	7.2	4	6.3	6	7.9
Crimes Against Property	6	8.5	5	7.6	9	11.3
Crimes Against the Person	7	9.2	5	7.6	8	10.4
Federal Statutes	8	11.0	6	9.5	10	13.0
Other Criminal Code Offences	6	10.0	6	8.4	10	12.9
N = 17,622,727						

Committed for Trial

The same strong pattern occurs for committed to trial. Comparing duty counsel with not represented the *median* number of appearances to achieve committal to trial is lower for duty counsel in 4 of the 6 offence categories and the same for 2 out of 6. The median number of appearances to achieve committal to trial is higher for retained counsel in all 6 of the 6 offence categories.

The *mean* number of appearances is lower for appearances at which the accused was represented by duty counsel was lower than for not represented in all 6 offence categories . The *mean* number of appearances to disposition greater for retained counsel than for not represented in 6 out of 6 offence categories.

[illegible]

Stays of Proceedings

Comparing duty counsel with not represented, the *median* number of appearances to achieve a stay of proceedings is lower for duty counsel in 4 of the 6 offence categories and the same for 2 out of 6. The *median* number of appearances for a stay of proceedings is higher for retained counsel in all 6 of the 6 offence categories.

The *mean* number of appearances is lower for appearances at which the accused was represented by duty counsel was lower than for not represented in 6 out of 6 offence categories. The *mean* number of appearances to disposition greater for retained counsel than for not represented and represented by duty counsel in 6 out of 6 offence categories.

Table 1c: Stay of Proceedings: Median and Mean Number of Appearances to Disposition for Major Offence Types Comparing Types of Representation						
Stays	Not Represented		Duty Counsel		Retained Counsel	
	Median	Mean	Median	Mean	Median	Mean
Administration of Justice	7	9.7	6	9.3	9	11.5
Criminal Code Traffic	6	10.1	5	7.8	7	9.3
Crimes Against Property	7	10.1	5	8.6	9	11.6
Crimes Against the Person	7	10.3	6	8.9	9	11.3
Federal Statutes	7	9.7	7	8.7	10	11.8
Other Criminal Code Offences	6	13.2	6	9.2	10	12.5
N = 17,622,627						

Discharges

Comparing appearances at which accused persons were represented by duty counsel with accused who are not represented, the *median* number of appearances to achieve a discharge is lower for duty counsel in 3 of the 6 offence categories and greater for 3 out of 6. The *median* number of appearances for a discharge is higher for retained counsel in all 4 of the 6 offence categories compared with duty counsel and higher than not represented in 5 of 6 offence categories.

The *mean* number of appearances is lower for appearances at which the accused was represented by duty counsel was lower than for not represented in 2 out of 6 offence categories and greater in 3 out of 6 and the same in 1 out of 6. The *mean* number of appearances to disposition greater for retained counsel than for not represented in 6 out of 6 offence categories. Compared with duty counsel the mean number of appearances is higher in 4, the same in one and lower in one offence category.

Table 1d: Discharged: Median and Mean Number of Appearances to Disposition for
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Guilty

The median number of appearances to achieve a guilty outcome³⁴ is less for duty counsel than not represented for 3 offence types, and the same for 4. The mean number of appearances is greater for duty counsel in 4 offence categories and lower for 3 offence types.

Both the median and the mean number of appearances is greater for all appearances combined at which the accused was represented by retained counsel compared with all appearances at which the accused was not represented. The mean number of appearances is greater for retained counsel than duty counsel in 6 offence types and lower in 1.

Table 1f: Guilty: Median and Mean Number of Appearances to Disposition for Major Offence Types Comparing Types of Representation						
Guilty	Not Represented		Duty Counsel		Retained Counsel	
	Median	Mean	Median	Mean	Median	Mean
Administration of Justice	4	7.5	4	8.1	8	10.1
Criminal Code Traffic	4	6.3	3	5.8	6	8.4
Crimes Against Property	5	9.3	5	10.8	9	11.5
Crimes Against the Person	5	8.2	4	7.2	8	10.9
Federal Statutes	6	10.9	5	11.1	9	11.8
Other Criminal Code Offences	5	8.9	5	8.4	9	11.7
Provincial Offences	4	6.7	4	6.9	5	6.8
N = 17,622,627						

Charges Withdrawn

The pattern for charges withdrawn is also mixed. Comparing appearances at which accused were represented by duty counsel with accused who were not represented the *median* number of appearances to where changes were withdrawn is lower for duty counsel in 2 of the 7 offence categories, the same in 5 out of 7. The *median* number of appearances for a withdrawal of charges is higher for retained counsel in 6 of the 7 offence categories and the same in 1 compared with not represented and the same in 1. The median number of appearances to a withdrawal of charges is greater for retained counsel in all offence categories.

The *mean* number of appearances is lower for appearances at which the accused was represented by duty counsel than for not represented in 3 out of 7 offence categories and higher in 4 of 7. The *mean* number of appearances to disposition greater for retained counsel than for not represented in all offence categories and, similarly, greater than duty counsel in all 7 offence categories.

³⁴ The data do not distinguish a plea from a finding of guilty.

Table 1g: Charges Withdrawn: Median and Mean Number of Appearances to Disposition for Major Offence Types Comparing Types of Representation

Charges Withdrawn	Not Represented		Duty Counsel		Retained Counsel	
	Median	Mean	Median	Mean	Median	Mean
Administration of Justice	4	7.0	4	8.1	8	10.6
Criminal Code Traffic	4	6.5	4	5.8	6	7.8
Crimes Against Property	4	6.9	4	8.2	8	10.6
Crimes Against the Person	5	7.2	4	6.8	7	9.4
Federal Statutes	4	6.9	4	8.5	7	10.0
Other Criminal Code Offences	5	7.4	5	9.4	8	10.4
Provincial Offences	7	6.4	2	3.0	5	6.4
N = 17,622,627						

Appendix Two

Detailed Tables: Median and Mean Number of Days to Disposition (Minus Bench Warrant Days) by Most Serious Offence at Disposition and Outcome

Acquittals

When the outcome was an acquittal, the median duration to disposition for duty counsel was less than for accused not represented for each offence type. The mean number of days to disposition was less for appearances at which duty counsel was present for 1 offence type out of 6. The median number of appearances to disposition for retained counsel was more than for not represented for 5 offences out of 6. The mean number of days to disposition for retained counsel was more than for not represented for 6 offences times out of 6. Both the median and mean values were greater for retained counsel compared with duty counsel for all offence types.

Table 2a: Acquittals, Median and Mean Number of Appearances to Disposition for Major Offence Types Comparing Types of Representation						
Acquittal	Not Represented		Duty Counsel		Retained Counsel	
	Median	Mean	Median	Mean	Median	Mean
Administration of Justice	242	280.2	192	232.4	256	290.0
Criminal Code Traffic	418	455.7	406	435.8	422	455.5
Crimes Against Property	273	307.0	269	301.6	338	372.5
Crimes Against the Person	319	370.8	284	317.8	367	390.1
Federal Statutes	321	256.8	301	329.5	409	457.3
Other Criminal Code Offences	346	381.6	342	344.2	342	424.9
N = 2,022,360						

Committal to Trial

When the outcome is committal to trial, both the median and mean length of time to disposition in days is lower for duty counsel than not represented all 6 offence groups. For retained counsel the median number of days is lower compared with accused who are not represented in 3 offence groups and lower than duty counsel for 3 offence types. The mean number of days for retained counsel is higher than for not represented in 5 of 6 offence types but is higher than duty counsel in 5 of the 6 offences.

Table 2b: Committal to Trial: Median and Mean Number of days to Disposition for Major Offence Types Comparing Types of Representation						
Committal to Trial	Not Represented		Duty Counsel		Retained Counsel	
	Median	Mean	Median	Mean	Median	Mean
Administration of Justice	195	223.0	157	194.8	228	260.1

Criminal Code Traffic	406	358.6	343	347.5	330	340.2
Crimes Against Property	394	400.3	363	310.7	300	333.3
Crimes Against the Person	309	323.5	290	306.6	300	316.6
Federal Statutes	341	362.5	316	327.4	330	346.9
Other Criminal Code Offences	383	353.4	244	306.6	303	332.7
N = 2,002,306						

Stay of Proceedings

The median and mean duration to disposition are lower for duty counsel than for compared with not represented. For retained counsel both median and mean values are higher than for not represented or duty counsel in all offence types.

Table 2c: Stay of Proceedings: Median and Mean Number of days to Disposition for Major Offence Types Comparing Types of Representation						
Stay of Proceedings	Not Represented		Duty Counsel		Retained Counsel	
	Median	Mean	Median	Mean	Median	Mean
Administration of Justice	112	166.5	101	147.4	190	235.5
Criminal Code Traffic	189	332.1	301	329.8	437	455.6
Crimes Against Property	113	171.1	91	132.5	187	243.9
Crimes Against the Person	202	245.4	174	210.2	245	286.6
Federal Statutes	132	185.1	104	154.1	219	270.8
Other Criminal Code Offences	165	207.8	135	180.2	221	282.8
N = 2,002,306						

Discharged

Comparing duty counsel and not represented, the median and mean durations are lower for duty counsel in 5 of 6 offence types. Median durations for retained counsel are lower compared with not represented in 5 of 6 offence types and the mean values are lower for retained counsel in 4 of 6 offences. Comparing retained counsel and duty counsel, median values are lower in 4 of 6 offence categories and the means are also lower for 4 of the 6 offence categories.

Table 2e: Discharged: Median and Mean Number of Days to Disposition for Major Offence Types Comparing Types of Representation						
Discharged	Not Represented		Duty Counsel		Retained Counsel	
	Median	Mean	Median	Mean	Median	Mean
Administration of Justice	345	364.3	266	316.5	250	280.6
Criminal Code Traffic	--	--	508	444.0	358	377.4
Crimes Against Property	384	365.2	338	342.8	363	360.3

Crimes Against the Person	376	339.2	326	322.3	301	320.7
Federal Statutes	232	342.5	366	318.2	375	365.2
Other Criminal Code Offences	341	323.8	317	333.3	302	331.5
N = 2,002,306						

Charges Dismissed

The median days to a disposition of charges dismissed are higher for duty counsel compared with not represented for 5 of 6 offence types while the means are higher for 3 of 6 offence types. Comparing retained counsel with not represented the median values are higher for 5 of the 6 offence categories. The mean durations to disposition are higher for retained counsel in all but 1 offence type.

Table 2f: Charges Dismissed: Median and Mean Number of Days to Disposition for Major Offence Types Comparing Types of Representation						
Charges Dismissed	Not Represented		Duty Counsel		Retained Counsel	
	Median	Mean	Median	Mean	Median	Mean
Administration of Justice	100	159.4	159	198.3	235	269.4
Criminal Code Traffic	406	422.4	357	281.8	403	440.2
Crimes Against Property	218	275.0	230	248.9	313	337.9
Crimes Against the Person	259	306.9	271	301.2	334	361.7
Federal Statutes	209	276.7	326	329.8	404	422.3
Other Criminal Code Offences	201	247.1	219	352.3	329	365.4
Provincial Offences	302	302.0	--	--	204	203.5
N= 2,002,036						

Guilty

With respect to guilty outcomes the median and mean values for days to disposition are lower for all offence types for duty counsel compared with not represented accused. The median and mean values are higher for retained counsel than both not represented and duty counsel.

Table 2g: Plea and Finding of Guilty: Median and Mean Number of Days to Disposition for Major Offence Types Comparing Types of Representation						
Guilty	Not Represented		Duty Counsel		Retained Counsel	
	Median	Mean	Median	Mean	Median	Mean
Administration of Justice	56	106.9	30	71.7	96	143.5
Criminal Code Traffic	108	182.1	62	125.5	185	245.6
Crimes Against Property	91	146.1	59	102.7	136	183.8
Crimes Against the Person	136	190.9	73	124.9	171	222.3

Appendix Three

Analysis of Variance Showing the R Square Values for Amount of Explained Variance

The tables in this Appendix show the results of analysis of variance, first using number of appearances as the dependent variable and, second, duration as the dependent variable. The results of both are similar. The R squared values are low. The model for number of appearances explains only 15% of the variance in the dependent variable. The model for duration explains 17% of the variance in duration. In statistical language, this means that the 4 independent variables in the model are explaining very little of the variance or differences in appearances or duration. In ordinary language, the variables available in the data set do not account for much of what is occurring in the real world of the court that affects the number of appearances and duration in days to disposition.

Results of Analysis of Variance for Effects on Number of Appearances		
	F	Sig.
intercept	587.8	.0001
Representation Type	27,491.1	.0001
Case Outcome	4023.6	.0001
Most Serious Offence at Disposition	1807.0	.0001
Judicial Region	5561.3	.0001
Calendar Year	45,306.9	.0001
R Squared = 0.152		
N = 2,002,306		

Results of Analysis of Variance for Effects on Duration of the Case		
	F	Sig.
intercept	1802.9	.0001
Representation Type	32,267.2	.0001
Case Outcome	5377.8	.0001
Most Serious Offence at Disposition	2655.2	.0001
Judicial Region	6833.1	.0001
Calendar Year	24,342.4	.0001
R Squared = 0.170		
N = 2,002,306		

Appendix Four

Detailed Tables: Odds Ratios for Comparisons Between Types of Representation; Not Represented/Represented by Duty Counsel, Not Represented/Represented by Retained Counsel, Represented by Duty Counsel/Represented by Retained Counsel; for Outcomes and Selected Offence Types (Most Serious Offence at Disposition)

An odds ratio is the ratio of two ratios. For example, in the table below, the ratio of acquittals to other outcomes when not represented is a / b . The ratio of acquittals to other outcomes when represented by counsel is c / d . These ratios are the odds.

	Acquittal	Any Other Outcome	
Not Represented	a	b	$a + b$
Represented by Counsel	c	d	$c + d$

The question of how much greater or how much less the odds are of an acquittal if not represented versus represented by counsel is $a / b / c / d$. An odds ratio of 1.0 means that the odds are even. A ratio of greater than 1 would mean that the odds of an acquittal would be that many times greater if represented compared with being unrepresented. If the odds ratio is less than 1 then the odds of an acquittal would be that many times less if represented. In the first line of the table below the odds of an acquittal on a charge of common assault are 0.596 times less if represented by duty counsel compared with being unrepresented. The odds of an acquittal are 1.406 times greater if represented by retained counsel than if not represented. Comparing duty counsel and retained counsel, the odds of an acquittal on a charge of common assault are 2.360 times greater if represented by retained counsel than if represented by duty counsel.

Acquittal	Not Represented / Represented by Duty Counsel	Not Represented / Represented by Retained Counsel	Represented by Duty Counsel/Represented by Retained Counsel
Common Assault	0.596	1.406	2.360
Drug Trafficking	0.706	2.590	3.669
Fraud	0.543	1.259	2.359
Impaired Driving	0.813	2.885	3.547
Sexual Assault	0.680	1.325	1.934
Failure to Comply	0.679	1.608	2.778
Guilty	Not Represented / Represented by Duty Counsel	Not Represented / Represented by Retained Counsel	Represented by Duty Counsel/Represented by Retained Counsel
Common Assault	1.825	2.158	1.183
Drug Trafficking	1.481	2.111	1.426
Fraud	1.864	2.779	1.490

Impaired Driving	1.705	0.707	0.414
Sexual Assault	1.422	1.822	1.281
Failure to Comply	2.340	2.465	1.110
Committal to Trial	Not Represented / Represented by Duty Counsel	Not Represented / Represented by Retained Counsel	Represented by Duty Counsel/Represented by Retained Counsel
Common Assault	1.843	6.929	3.757
Drug Trafficking	0.966	2.385	2.468
Fraud	0.477	1.783	3.738
Impaired Driving	0.845	4.396	5.202
Sexual Assault	0.868	1.580	1.820
Failure to Comply	1.012	2.826	2.793
Discharge	Not Represented / Represented by Duty Counsel	Not Represented / Represented by Retained Counsel	Represented by Duty Counsel/Represented by Retained Counsel
Common Assault	1.090	2.416	2.217
Drug Trafficking	1.285	2.809	2.186
Fraud	0.673	3.509	5.214
Impaired Driving	1.000	1.000	2.134
Sexual Assault	1.053	1.361	1.293
Failure to Comply	1.000	1.000	1.768
Dismissal	Not Represented / Represented by Duty Counsel	Not Represented / Represented by Retained Counsel	Represented by Duty Counsel/Represented by Retained Counsel
Common Assault	0.640	1.428	2.231
Drug Trafficking	1.261	2.551	2.023
Fraud	0.349	0.656	1.880
Impaired Driving	1.449	3.016	2.082
Sexual Assault	0.995	1.336	1.399
Failure to Comply	0.202	0.310	1.552
Stay	Not Represented / Represented by Duty Counsel	Not Represented / Represented by Retained Counsel	Represented by Duty Counsel/Represented by Retained Counsel
Common Assault	0.946	0.814	0.860
Drug Trafficking	1.315	0.693	0.527
Fraud	0.922	0.650	0.655
Impaired Driving	0.961	1.567	1.631
Sexual Assault	0.712	0.712	1.000
Failure to Comply	0.981	0.743	0.757
Withdrawal of	Not Represented /	Not Represented /	Represented by Duty

Charges	Represented by Duty Counsel	Represented by Retained Counsel	Counsel/Represented by Retained Counsel
Common Assault	0.580	0.459	0.792
Drug Trafficking	0.672	0.477	0.709
Fraud	0.573	0.377	0.659
Impaired Driving	0.528	1.136	2.153
Sexual Assault	0.994	0.536	0.544
Failure to Comply	0.991	0.455	0.907

Appendix Four

Analysis of Variance Showing the R Square Values for Amount of Explained Variance

The tables in this Appendix show the results of analysis of variance, first using number of appearances as the dependent variable and, second, duration as the dependent variable. The results of both are similar. The R squared values are low. The model for number of appearances explains only 15% of the variance in the dependent variable. The model for duration explains 17% of the variance in duration. In statistical language, this means that the 4 independent variables in the model are explaining very little of the variance or differences in appearances or duration. In ordinary language, the variables available in the data set do not account for much of what is occurring in the real world of the court that affects the number of appearances and duration in days to disposition.

Results of Analysis of Variance for Effects on Number of Appearances		
	F	Sig.
intercept	587.8	.0001
Representation Type	27,491.1	.0001
Case Outcome	4023.6	.0001
Most Serious Offence at Disposition	1807.0	.0001
Judicial Region	5561.3	.0001
Calendar Year	45,306.9	.0001
R Squared = 0.152		
N = 2,002,306		

Results of Analysis of Variance for Effects on Duration of the Case		
	F	Sig.
intercept	1802.9	.0001
Representation Type	32,267.2	.0001
Case Outcome	5377.8	.0001
Most Serious Offence at Disposition	2655.2	.0001
Judicial Region	6833.1	.0001
Calendar Year	24,342.4	.0001
R Squared = 0.170		
N = 2,002,306		