Canadian Journal of Law and Society / Revue Canadienne Droit et Société (2025), 1–23
doi:10.1017/cls.2024.34

RESEARCH ARTICLE / ARTICLE DE RECHERCHE

Drug Treatment Courts According to Criminal Defence Lawyers

Marianne Quirouette[1], Cecília Batista[2], Nicolas Spallanzani-Sarrasin[3] and Katharina Maier[4]

[1]Assistant Professor, Université de Montréal, École de Criminologie; [2]York University, Osgoode Hall, Toronto, Ontario, Canada; [3]PhD student, Université de Montréal, École de Criminologie and [4]Associate Professor, University of Winnipeg, Department of Criminal Justice
Corresponding author: Marianne Quirouette; Email: marianne.quirouette@umontreal.ca

Abstract

Defence lawyers working in lower criminal courts are increasingly invited to consider a variety of holistic or alternative strategies like drug treatment courts (DTC). This raises new ethical and practical questions. Scholars have been critical, showing how specialized courts circumvent the principle of the presumption of innocence, impose onerous conditions and surveillance, and lack the resources required to support participants over the long term. What is not known, however, is how defence lawyers representing marginalized clients talk about and engage with DTC programs. Our paper examines this, drawing from interviews with defence counsel working in Toronto and Montreal (n=98). We describe and discuss when and why participants report being either more supportive or more critical of drug treatment courts, and how they borrow from therapeutic justice in their "regular" practice. Our discussion engages with questions about access to health and social support resources, about interdisciplinary interventions and the ways in which people are criminalized rather than helped.

Keywords: drug treatment court; therapeutic justice; criminal court; defence lawyers; bail

Résumé

Les avocats de la défense exerçant principalement devant les tribunaux pénaux de première instance sont de plus en plus régulièrement invités à envisager une variété de stratégies holistiques ou alternatives telles que les tribunaux spécialisés dans le traitement de la toxicomanie (TTT). Cela soulève de nouvelles questions éthiques et pratiques. Les chercheurs se montrent, quant à eux, critiques face à ces changements. En effet, plusieurs ont démontré comment les tribunaux spécialisés peuvent contourner le

© The Author(s), 2025. Published by Cambridge University Press on behalf of Canadian Law and Society Association / Association Canadienne Droit et Société. This is an Open Access article, distributed under the terms of the Creative Commons Attribution licence (http://creativecommons.org/licenses/by/4.0), which permits unrestricted re-use, distribution and reproduction, provided the original article is properly cited.

https://doi.org/10.1017/cls.2024.34 Published online by Cambridge University Press

principe de la présomption d'innocence et imposer des conditions ainsi qu'une surveillance plus contraignantes. Qui plus est, plusieurs de ces tribunaux spécialisés ne disposent pas des ressources nécessaires afin d'accompagner les participants à long terme. En revanche, nous ne savons pas comment les avocats de la défense représentant des clients marginalisés perçoivent ou « négocient » avec les TTT. Cet article tente de répondre à ce questionnement en s'appuyant sur 98 entrevues menées auprès d'avocats de la défense exerçant à Toronto et à Montréal. Nous identifions et discutons non seulement des circonstances où les participants déclarent être plus favorables ou plus critiques à l'égard des TTT, mais aussi de la façon dont ils mobilisent aussi le concept de « justice thérapeutique » dans leur pratique. Notre discussion aborde aussi les questions de l'accès aux services de santé et de soutien social, des interventions interdisciplinaires et de la manière dont les personnes sont criminalisées plutôt qu'aidées.

Mots clés: tribunal de traitement de la toxicomanie; justice thérapeutique; tribunal pénal; avocats de la défense; mise en liberté sous caution

I. Introduction

Specialized courts aim to tackle recidivism and prison overcrowding by addressing some of the underlying causes of offending, such as addiction, mental health and homelessness, providing targeted interventions (e.g. rehabilitation supports, housing) and facilitating collaboration between legal and health or social service professionals (Casey and Rottman 2000; Berman 2004; Birgden 2004). Over the past few decades, these specialized courts have expanded both in Canada and internationally (Government of Canada 2021). Some scholars view this as a good alternative measure, citing the focus of specialized courts on treatment and therapeutic interventions and their less adversarial court culture (Bentley 2000; Nolan 2001; Fischer and Geiger 2011; Gottfredson et al. 2007). But this continued expansion is also somewhat curious, given the well-documented concerns about the drawbacks and limits of this model for the participants and professionals who are involved. Drug Treatment Courts (DTCs) have been criticized for their strict programme expectations and supervision conditions, which trigger frequent breaches and high failure rates.[1] Scholars have also critiqued how participants in DTCs (and most other types of specialized courts) must plead guilty in order to be admitted into the programme and access support (Buckley and Bigelow 1992; Moore 2007; Hannah-Moffat and Maurutto 2012). Despite these critiques, many support the DTC model because evidence also shows that people who do complete the programme have lower recidivism rates and better treatment outcomes (Government of Canada 2021).

Some research has focused on how people who use drugs (PWUD) experience and perceive the DTC process (Quirouette et al. 2016). For instance, Moore and Hirai (2014) show how DTC participants are expected to perform according to normative correctional scripts, which can become difficult or impossible for some. Other studies have explored how professionals who are involved in DTCs come to characterize their experiences as challenging the boundaries of their

[1] Recent reports indicate a graduation rate below 20 percent in Canadian DTCs (Government of Canada 2021).

https://doi.org/10.1017/cls.2024.34 Published online by Cambridge University Press

field of practice (Moore 2007). More technical programme evaluations have also described what participants and staff report about their experience (see Government of Canada 2021). Less is known about the perspectives and practices of legal professionals whose work involves their engagement with DTCs without being part of the dedicated team. In particular, little attention has been given to how criminal defence lawyers who represent clients who might be considering, eligible for and/or involved in drug treatment court perceive its value. In fact, a recent report indicates the "lack of broad-based awareness of [DTC] programmes on the part of defence counsel" as a barrier to programme success (Government of Canada 2021, 16). The perspectives of defence counsel matter, shaping how they advise clients and manage access-to-justice issues.

In this paper, we focus on how defence lawyers who represent marginalized clients talk about and engage with DTC programmes. In doing so, we shed light on what defence lawyers appreciate about DTCs, what aspects they find problematic and which challenges their clients encounter within these court systems. Further, we describe how defence lawyers borrow techniques from DTCs to shape their own therapeutic practices and negotiate better outcomes for their clients. The analysis in this paper stems from a larger qualitative study about the legal representation of marginalized clients.[2] We draw upon semi-structured interviews with criminal defence lawyers (n = 98[3]) who work in the greater Toronto and Montreal regions and represent individuals who are facing various disadvantages, including, but not limited to, marginalized PWUD. We describe and analyze the perspectives and strategies of legal actors who represent marginalized accused in criminal courts: duty counsel and private practice lawyers who take on legal-aid work, as well as private counsel who do pro bono work.

As we detail with our findings, criminal defence lawyers can be both critical and appreciative of DTCs. First, we focus on participants who report favorable experiences and express belief in the merits of DTCs or therapeutic justice. Second, criticisms and concerns about exclusions or the punitive and onerous nature of DTCs are documented, including the pressure to plead guilty. Third, we illustrate how defence lawyers borrow elements from therapeutic justice to develop their personalized strategies when advising clients, while avoiding the aspects of DTCs that they disapprove of. Overall, our work engages with questions surrounding therapeutic justice, the presumption of innocence, the current realities of the drug toxicity crisis and recent calls for the decriminalization of drug possession in Canada.

1. Control and criminalization of marginalized PWUD

The over-criminalization of PWUD has been extensively documented, particularly since the 1970s' War on Drugs in the United States and Canada. Repressive

[2] We use terms such as "marginalization" and "disadvantage" to refer, for example, to individuals who are racialized, use drugs, experience homelessness, struggle with mental health, have disabilities, live in low-income situations, engage in sex work, etc.

[3] In this paper, we focus on 110 interviews with ninety-eight participants.

https://doi.org/10.1017/cls.2024.34 Published online by Cambridge University Press

policies disproportionately affect racialized and marginalized communities, including Black and Indigenous populations, people who are experiencing homelessness and those with mental health issues (Bellot et al. 2021; Earp et al. 2021; Grecco and Chambers 2019; Lavalley et al. 2018). Research has demonstrated how marginalized people are controlled even when they receive care (Soss et al. 2011; Goddard and Myers 2017). For example, Halushka (2020) showed the burdensome "runaround" that is part of the reentry process, in which both criminal justice and welfare overlap. Theorizing such dynamics, McNeill (2019) suggests that this type of "conditionality" of support can be characterized as *degradation.* According to the author, conditionality allows the penal state to create and magnify vulnerabilities, which further exacerbates structural inequalities. Poor and marginalized people are disqualified from the entitlements of ordinary citizenship through this "dispersal of degradation."

Research shows that criminal courts play a central role in perpetuating racial and socioeconomic inequalities, with several studies highlighting challenges and differential treatment at all stages of the criminal process. Research also shows how challenging it is for low-income defendants to access—and trust—legal representation due to exorbitant lawyer fees and inadequate legal-aid funding (Clair 2020; Bernheim et al. 2021). Indeed, low-income defendants are constricted in their choice of legal representation, having to rely on an inadequate legal-aid system, community organizations or pro bono lawyers or self-representation (ibid. 2021). Disadvantaged groups, including marginalized PWUD, are also subject to disparities in sentencing (Omori and Petersen 2020). As Clair and Woog put it, courts function as an unjust institution, contributing "to unique forms of state violence, social control and exploitation all their own, revealing the machinations of mass criminalization and injustice that operate between the police encounter and the prison cell" (2022, 3).

While court officials should consider social marginality factors including addiction, poverty, racism and/or untreated mental illness in drafting and justifying conditions for bail release (Winter and Clair 2023), in practice, bail conditions have been shown to disadvantage marginalized accused, leaving them "set up to fail" (CCLA 2014; Myers 2021). In particular, spatial restrictions[4] have been shown to limit people's access to critical community and treatment support. For marginalized PWUD who rely on such support for their well-being and survival, bail conditions have been shown to produce particularly harmful and marginalizing effects (Sylvestre et al. 2019). Many have criticized how marginalized people experience frequent reincarceration or are "tossed around" the institutional revolving door as a result of overly restrictive bail and other penal conditions that fail to recognize their lived realities (Harrison 2001; Warner and Kramer 2009).

[4] Spatial restrictions are conditions that are imposed by courts that aim to prevent an individual from travelling to a certain area. These geographic boundaries vary, but can be a street, a block, a neighborhood or even an entire city in some cases.

https://doi.org/10.1017/cls.2024.34 Published online by Cambridge University Press

2. DTCs, therapeutic justice and control

DTCs, like other specialized courts, offer participants the opportunity to avoid a prison sentence by agreeing to plead guilty to the offence, follow bail conditions and participate in therapy and other programming (Bentley 2000; Nolan 2001; Fischer 2003; Gottfredson et al. 2007). DTC programmes in Canada focus on people who are charged with an offence "where a substance use disorder has contributed to the commission of that offence" (Public Prosecution Service of Canada 2022), while specifically focusing on people who use cocaine, crack, methamphetamines and opiates.

Canada's first DTC programme was launched in Toronto in 1998 and the second in Vancouver in 2001. The Department of Justice Canada now has funding agreements with ten provinces/territories to fund thirteen DTCs nationwide (Government of Canada 2021). These DTC programmes are in cities including, but not limited to, Toronto, Vancouver, Edmonton, Winnipeg, Calgary and Montreal (Bernier 2017; Weinrath et al. 2018; 2019).[5] An undetermined number of DTCs operate without this federal funding (Steering Committee on Justice Efficiencies and Access to the Criminal Justice System 2021). For instance, in Ontario, we were told that only two of the ten operating DTCs receive federal funding.

Driven by therapeutic logics (Wexler and Winick 1996), specialized courts such as DTCs aim to set aside traditionally adversarial court dynamics that are focused on case adjudication to promote holistic, interdisciplinary and collaborative problem-solving that is focused on rehabilitation. These courts aim to address clients' substance use via access to treatment and support, to reduce recidivism and to overcome the limitations of the traditional justice system, which often fail to meet the needs of marginalized PWUD, many of whom also experience homelessness or housing precarity (Casey and Rottman 2000; Berman 2004; Birgden 2004). DTC programmes typically operate with a dedicated court team[6] (judge, Crown, defence, police, probation and community liaison), treatment team (caseworkers, nurses, peer leaders) and community support partners (housing workers, detox, rehab, group support). Pre-court case-management meetings are essential to the DTC model, supporting the monitoring and supervision of its clients, including reviewing drug-testing results and deciding about interventions (rewards or punishments), in partnership with both criminal justice and health-care systems (La Prairie et al. 2002). In general, clients are expected to attend court regularly and also to participate in daily or weekly treatment programmes that are focused on coping skills, high risk-identification skills, goal setting, stress management or employment skills (CCSA 2007; Government of Canada 2021). In most DTCs, participants must report to their probation officer or case manager on a regular basis throughout the duration of the programme, which will generally last

[5] In the United States, the first DTC began operations in Miami, Florida in 1989. There are now 4,000 programmes nationwide (US Department of Justice 2023). DTCs are also operating in Australia, Brazil, Scotland, England, Ireland, New Zealand, Norway, Bermuda and Jamaica (Government of Canada 2021).

[6] In Ottawa, there is no dedicated judge. Instead, there is a rotating team (Government of Canada 2021).

https://doi.org/10.1017/cls.2024.34 Published online by Cambridge University Press

for between twelve and twenty-four months.[7] There are core characteristics; however, operational structures, policies and practices vary significantly from one programme to another.

DTC participants are expected to play a proactive and productive role in shaping their own rehabilitation process away from drug use and offending (Bernier 2017; Vrancken and Macquet 2006). People who are charged with violent offences and with using a weapon, along with those who have a history of violence, are typically excluded, as are those who are charged with trafficking, putting a young person at risk or being part of a gang. The policy is to restrict admission into the DTC programme if there is an indication that "the DTC programme is being used solely to avoid punishment, rather than to seek treatment for a substance use disorder that contributed to the criminality in question" (Public Prosecution Service of Canada 2022, section 2.3).

Specialized courts adapt well-established legal practices such as diversion, bail procedures, risk/needs assessment and sentencing, while redefining the role of community social welfare and health practitioners (Hannah-Moffat and Maurutto 2012; Moore 2007). As several scholars have pointed out, DTCs involve elements of therapy, but also of control, surveillance and punishment, raising new challenges for legal actors and other professionals who engage with them (Moore 2007; Moore and Hirai 2014; Quirouette et al. 2016). In addition to imposing numerous bail conditions, which risk breaches[8] and raise questions about respect for the principle of the presumption of innocence (Turnbull and Hannah-Moffat 2009; Hannah-Moffat and Maurutto 2012), these courts blur the line between care and control, pushing *legal* actors to use *psychosocial* knowledge and *psychosocial* actors to use *legal* knowledge (Fortin and Raffestin 2017; Hannah-Moffat and Maurutto 2012; Moore 2007). DTCs aim to facilitate access to comprehensive support, but structural constraints such as long waiting times for affordable and/or supportive housing make it difficult for clients to find stability or meet their basic needs. The criticisms of DTCs echo concerns about other "benevolent" noncustodial justice practices that have been shown to contribute to net-widening by dragging in individuals who would have otherwise escaped criminalization or benefited from less onerous diversion programmes (Kohler-Hausmann 2018; Scott-Hayward 2017; see also Cohen 1985; Foucault 1975).

These debates raise questions about the relative value and impact of DTCs, and are particularly relevant in light of the current drug toxicity crises in Canada and the United States (CCSUA n.d.; Hatt 2021). Many Canadian cities have struggled to address the increasing number of opioid overdoses and deaths—a situation that is compounded by the lack of access to stable and safe housing, addiction programmes, and community and government support for marginalized PWUD (Lappiere 2023). Amidst the current drug toxicity crisis, more

[7] For more information, see https://cdn-contenu.quebec.ca/cdn-contenu/adm/min/justice/programmes/pttcq/Montreal/PTTCQ_PROGRAMME_TT_MTL.pdf for Montreal and https://www.camh.ca/en/your-care/programs-and-services/drug-treatment-court-services for Toronto.

[8] Strict conditions can include curfews, drug testing, mandated therapies and, more broadly, compliance with what other medical or social authorities impose. See more about onerous conditions in general in CCLA (2014).

https://doi.org/10.1017/cls.2024.34 Published online by Cambridge University Press

stakeholders and researchers have advocated against the use of court and criminal justice measures to address addiction and criminality, calling instead for drug decriminalization (Jackman 2021) and the development of safe supply options, comprehensive harm reduction and public health services in active collaboration with individuals with lived experiences (Sue et al. 2022). This context shapes defence lawyers' perspectives on the value and nature of DTCs.

3. Holistic lawyering, zealous rep and ethical dilemmas

Defence lawyers who represent disadvantaged clients are pressured by managerial requirements that are focused on regulating people efficiently rather than adjudicating cases (Kohler-Hausmann 2018; 61; see also Resnik 1982). Many lack the resources, time and energy that are required to ensure a high level of involvement in each client's case (Sabbeth 2015). Defence counsel who work with marginalized accused experience the chronic "stress of injustice" that is generated by the "the social and psychological demands of working in a punitive system with laws and practices that target and punish those who are the most disadvantaged" (Baćak et al. 2024, 1). They are "structural antagonists," described as "of the state" while working "against the state" (Slee 2023, 1). Slee shows that, despite their status and knowledge as court actors, public defenders lack the power to do much about the injustice that they see (ibid.). They must be strategic in choosing when and how they advocate for their clients.

Navigating resource pressures, legal realities as well as clients' wishes and therapeutic needs, defence lawyers adapt their *zealous advocacy*, employing whatever methods are available to respond to what they perceive as the best interests of their client (Van Cleve 2012; Sabbeth 2015). Following clients' instructions, they are often pushed into accepting various forms of injustice, as is the case with "false" guilty pleas (Van Cleve 2012). Navigating this tension is often the source of ethical dilemmas for lawyers, who contend with slippery notions of best interests and client preferences (ibid.). Woolley's (2016) work suggests that this is also an issue for Canadian defence counsel who are navigating the ethical questions related to plea bargaining. Borrowing from Freedman (1967), she explains how they face *hard questions* where "the normative values of the legal system and of ordinary morality are in irreducible conflict" (Woolley 2016, 1180). This means that defence counsel "have to choose between, on the one hand, acting in their clients' best interests and, on the other hand, refusing to participate in an injustice and [or] misrepresentation to the court" (ibid.). This is relevant to DTC practices because participation requires a guilty plea in exchange for treatment and a lighter noncustodial sentence.

DTCs (re-)shape defence work with PWUD, creating new considerations and challenges. In DTCs and other specialized courts, defence lawyers collaborate with various social service actors, including those involved in detox, addiction treatment and housing support. These collaborations raise new issues for all stakeholders involved, who are tasked to navigate beyond their own fields of practice, translating knowledge and balancing various priorities that are related to both care and control (Moore 2007). Research has shown how legal actors

https://doi.org/10.1017/cls.2024.34 Published online by Cambridge University Press

navigate these therapeutic environments, informed by the type of case they have before them, their previous experience, as well as available resources and relationships with other actors (Bernier et al. 2011). This highlights the importance of examining defence lawyers' understanding and strategies around DTCs.

II. Methods

We draw from a larger project about defence lawyers in criminal courts who work with clients who are facing marginalization (n = 147). In the larger project, we included defence lawyers who practise in two different provinces, in northern, rural, suburban and urban areas, with equal proportions of private practice and legal-aid lawyers. For this paper, however, we focus on a subset of participants who practise in and around two urban centres: Montreal (n = 50) and Toronto (n = 48).[9] We focus on this group as they had more to say about DTCs.[10] Our analysis focuses on qualitative interviews, but we also include field notes from our observations in courtrooms, courthouses, criminal lawyers' events and training sessions.

We gained access to participants through snowball methods, making use of existing networks and direct recruitment strategies. In Toronto, thirty interviews were undertaken in 2018/19, pre-pandemic, either at the courthouse, in legal-aid spaces or at law firms in the city. A further eighteen Toronto interviews were conducted from 2021 to 2023, mostly on Zoom. Later, in 2022 and 2023, we reinterviewed twelve of our "original" participants from 2018, meaning that, for Montreal and Toronto, we conducted 110 interviews with ninety-eight participants. In Montreal, fifty interviews were conducted from 2020 to 2023, also mostly on Zoom. This matters because practices and perceptions about DTCs do change over time and our paper might not reflect the current realities of these programmes.[11] The initial thirty interviews were all conducted by the study principal investigator; subsequently, four research assistants—including two coauthors of this paper—also helped to conduct interviews.

Interviews lasted an average of one hour and fifty minutes. They were semi-structured, with questions that focused on defence work with multiply disadvantaged defendants with regard to practice management, relationships with clients and issues related to bail, community supervision, alternative measures, plea bargains and sentencing. Interviews also focused on interactions with

[9] For confidentiality reasons, all participants' names have been replaced by aliases.

[10] DTCs are mostly located in urban centres with greater availability of the community-based resources (housing, addictions treatment, social services) that are integral features of the DTC model.

[11] In both cities, the main drug treatment court programme saw disruptions and evolutions that played into how criminal defence see the value of supporting their clients' participation. In Montreal, a relatively new programme had to be established. Only since 2012 has the *Programme de traitement de la toxicomanie de la Cour du Québec* (PTTCQ) been operating as the centralized DTC for the greater Montreal region. On the other hand, Toronto's DTC was established in 1998—the longest-standing DTC in Canada (Bentley 1999; Government of Canada 2021). In 2023, after twenty-four years of operation, they had to review and adapt protocols and practices by following a challenging amalgamation of numerous provincial courts at a new location. As our interviews spanned across five years, some lawyers told us about programmes that were pilot projects or no longer exist.

https://doi.org/10.1017/cls.2024.34 Published online by Cambridge University Press

community service providers and on collaborative problem-solving initiatives. Participants were all asked about their impressions and experiences with specialized courts. Participants were also asked how they support clients who use drugs, for whom therapeutic interventions are relevant, outside the confines of formalized programmes. This informs our findings about "DTC in regular courts."

Some had direct experience of working for or with a DTC programme ($n = 79$). Our participant group includes defence who have worked inside DTC programmes as rotating (or appointed) duty counsel and private counsel who have appeared in DTCs. Those with direct experience provided valuable insights into the challenges, best practices and programme modifications over time. We also included, and analyzed, what was said by some lawyers who had little to no direct experience of DTCs ($n = 19$). This group had opinions about DTCs that were shaped by what they had heard from colleagues and clients. We documented their impressions and resulting optimism or pessimism towards these courts. Understanding their views on this, even if they are based on hearsay, is essential to understanding when and why defence are willing to advise their clients to agree to DTCs.

Our paper is not an evaluation or comparative analysis of the DTCs in Toronto and Montreal. Rather, it offers analysis and discussion of the perceptions of criminal defence lawyers who practise primarily in those two cities. We acknowledge that their accounts might not reflect the current realities of DTCs in Toronto, Montreal or other parts of Ontario and Quebec. And, although our participants practise primarily in Toronto and Montreal, they also work in other jurisdictions. What they told us about DTCs might reflect their engagement with programmes that are operating outside of Toronto and Montreal.

Interview memos were written after each interview and then again after coding. Three members of the research team, the PI included, organized the data via "codebook style thematic analysis" (Braun and Clark 2021) using NVivo software. We co-constructed shared "live" documents to build vertical memos (focused on participants) and horizontal memos (focused on established and emerging themes). This helped our team to maintain a structured approach that could stay open to unexpected themes. For example, the topic of DTCs was not explicitly part of the original semi-structured interview guide. However, asking about therapeutic courts led to discussions about experiences with DTCs.[12] Via memo writing, team discussions and the revision of semi-structured tools, we adapted later interviews to ask more precisely about DTCs.

III. Findings

All ninety-eight participants had experience of working with clients with drug-related charges. They were familiar with DTCs, but many did not express an opinion on this type of programme. More than half of our participants (fifty-two

[12] We also heard about Gladue, Mental Health, and Domestic Violence courts and will focus on those elsewhere.

https://doi.org/10.1017/cls.2024.34 Published online by Cambridge University Press

out of ninety-eight) expressed a clear value judgment for or against DTCs.[13] Of this group, thirty-one were primarily "negative," ten were primarily "positive," and eleven shared mixed positions, perspectives or experiences. We note a lack of consensus on DTCs. Nonetheless, some key themes can be identified. In Subsections 1 and 2, we focus on the key advantages and disadvantages reported by criminal defence lawyers. In Subsection 3, we show how defence lawyers borrow from the logics and practices of DTCs to navigate court expectations, secure a better outcome for clients and avoid the drawbacks of formal DTCs. We then discuss the relevance of these findings in relation to how courts can (re) produce inequality, how health-care access is managed by courts and corrections, and how drug toxicity crises and calls for harm reduction and decriminalization shape lawyers' perspectives on DTCs.

1. DTC merits

Though much of what we heard from participants was critical of DTCs, it is useful to highlight when and how some expressed appreciation for this court programme model. As we discuss below, (1) participants who lacked direct experience with DTCs appeared to be the most enthusiastic about the programme. Those who had advised or participated directly in DTC programmes also reported some more positive aspects. They told us about (2) the general merits of therapeutic justice and (3) the ultimate importance of clients being a good fit for the programme.

1.1 Participants who lacked direct experience with DTCs

Criminal defence lawyers who lacked direct DTC involvement expressed much optimism about the value of these programmes. They reported high expectations and hope that these programmes could improve the legal process for marginalized and/or disadvantaged accused by enhancing access to support and alternative measures to criminalization. For example, Isiah expressed that, while he has never worked with a DTC, he "loves" the idea because "the more options or resources are available to people the better. Anything that considers changing things out of the normal course of your only options are plea or trial." Many others who also expressed optimism and interest in the model had not yet represented clients through the DTC process. These participants believed that specialized courts and treatment programmes offer a legal process that is tailored to the unique needs of overrepresented groups in the criminal justice system.

1.2 General merits of therapeutic justice

Some lawyers told us specialized courts can have positive impacts on their clients. Participants explained how specialized training that is provided for DTC staff makes them more sensitive and competent when working with PWUD. Some talked about how, unfortunately, participation in specialized courts can sometimes be the best—or only—opportunity for the accused to engage in

[13] What the others told us about DTCs could not be classified as a clear value judgment for or against.

https://doi.org/10.1017/cls.2024.34 Published online by Cambridge University Press

therapeutic work with qualified multidisciplinary teams. We heard how having dedicated teams that provide continued support from start to finish helps with service continuity,[14] relationship-building and better-adapted interventions. One duty counsel with direct experience in DTCs explained how he liked the programme and found it rewarding to support clients who were involved because "there's a real team that works in drug treatment court" (Cory). Participants also liked the fact that, in DTCs, clients are treated in a more familiar, casual manner, unlike ordinary courts. They liked how DTCs stagger programme expectations into phases, to work on things gradually, sometimes only expecting abstinence closer to graduation. Some participants reported that mandated interventions encouraged defendants to positively transform their drug use and life circumstances. Lawyers who collaborate with DTCs also talked about gaining insight into how PWUD manage access to addiction or recovery resources (detox, rehabilitation, group support), sometimes helping them work toward abstinence or harm-reduction goals.

Defence lawyers told us about reductions in sentence harshness. DTCs involve long-term monitoring and support, providing enough time for clients to demonstrate capacity to comply with conditions and, more generally, to transform and better themselves according to social norms. This extended time on bail can generate more potential to breach but, if things go well, it can also give time to work on showing remorse, demonstrating that efforts have been made to address risk factors. Several participants mentioned that judges and lawyers for the Crown show moderation, even when defendants fail the programme. They highlight how, in some cases, DTC involvement can have a net positive impact on sentencing outcomes. As we explain later, though, punitive outcomes can also be amplified.

1.3 Ultimate importance of clients being a good fit for the programme

Lawyers with direct experiences with DTCs reported on how they can be a good choice. As Madeleine put it, "it's for specific cases. It's not always the right fit, but when it is, it can be good."[15] This participant and many others explained that it is *only* beneficial for clients who are the perfect fit. More "perfect" DTC clients are described as having a high level of motivation, willingness to engage in long-term therapy and commitment to follow conditions imposed by the court. For them, the programme can be life-changing, facilitating recovery, reducing conflict with the law, while supporting enhanced stability. As we discuss next, defence lawyers report that many PWUD are not a perfect fit.

[14] We heard from participants in Toronto that the court amalgamation affected consistency. The dedicated teams were replaced by rotating staff, who may work in specialized courts for only a few months and then not return for several more.

[15] Original: "c'est vraiment pour des situations précises. Tu peux pas le mettre à toutes les sauces, tu peux pas le proposer à tout le monde, mais quand le fit est là c'est bon."

https://doi.org/10.1017/cls.2024.34 Published online by Cambridge University Press

2. DTC criticism

Most participants expressed at least some level of criticism regarding DTCs. They focused on (1) exclusionary eligibility criteria, (2) legal requirements, such as waiving the right to a trial, locking in a guilty plea and delaying sentencing to remain on bail, and (3) the onerous nature of the programme, specifically its length, conditions, lack of individualization and punitiveness.

2.1 Exclusionary eligibility criteria

Participants expressed dissatisfaction with strict eligibility requirements. Many raised concerns about how DTC programmes exclusively admit defendants who have been convicted of nonviolent but serious offences. Ginette told us how "people can't be in the program if they just have a bullshit charge. It has to be a serious charge, since the DTC program's going to take them about two years to complete anyway."[16] Others talked about how eligibility criteria problematically exclude individuals who have violent charges, alleged gang affiliations or who are assessed as having concurrent issues, including overlapping drugs and alcohol problems. According to our participants, strict eligibility leads to the gatekeeping of crucial rehabilitative resources that are often not available outside the criminal justice system.

Participants noted the impact of social class in the selection process. Private defence explained how people with privilege, wealth and social resources can more readily access rehab or other support by themselves and can afford private representation to navigate their legal troubles. Their concern speaks to structural inequalities that exist within the criminal justice system. At the other end of the spectrum, participants also talked about how their more marginalized clients did not qualify. Some complained about cherry-picking, explaining that this is similar to what happens with other special programmes and diversions, which are also more accessible to White, young, socially conforming clients.

2.2 Legal requirements

Lawyers reported that they were hesitant to encourage DTC participation because admission requires that guilty pleas must be "locked in" after a thirty-day opt-out period. Some explained how this infringes upon the presumption of innocence, as some PWUD are discouraged from asserting their right to a trial via the offer of drug treatment and support, and may not fully grasp the ramifications of waiving their rights. As André puts it: "The defendants have to agree to plead guilty to all the charges and sometimes we don't even have the expert reports [...] you know, it's [...] it's completely unbelievable. Sometimes with these

[16] Original: "C'est quelqu'un qu'il faut qu'il ait une longue sentence qui lui pende au bout du nez parce que si c'est une petite niaiserie, tu n'es pas admissible aux PTTCQ non plus parce qu'il faut que ça soit au moins une sentence de deux ans parce que ça va te prendre au moins deux ans à traverser le programme."

https://doi.org/10.1017/cls.2024.34 Published online by Cambridge University Press

programs, the intention is noble, but it's too cumbersome and the straitjacket is too tight."[17]

Like him, many expressed concern that clients are pressured into pleading guilty and are then exposed to coercive conditions that can heighten the risk of punitive outcomes, including detention. Requiring a guilty plea also hinders lawyers' ability to help innocent clients who need drug treatment support. Participants explained that they can end up forfeiting a strong defence, waiving their right to a trial and securing a guilty plea while banking on a lenient sentence that may or may not materialize. Expanding on this notion, another participant shared that, if DTCs reduced the risk of punitive outcomes, then lawyers might be more willing to recommend them.

2.3 Onerous nature of the programme

Participants also communicated concern with high failure rates, leading some to dissuade defendants from these courts. Lawyers who were working in Montreal and Toronto expressed how—from a legal point of view—DTCs take a problematically long time. Danielle complained: "DTC is never-ending!"[18] She and others described the journey through a DTC as an all-consuming, multiyear endeavour. Some Toronto participants even talked about judges who required monthly follow-ups past graduation as part of the conditional sentence.

The lengthy process demands *a lot* of dedication from participants and opens up potential for the accumulation of administrative charges from breaching conditions. Relatedly, interviewees criticized how DTCs impose a rigorous schedule of commitments. As Jody put it, "drug treatment court is very onerous. It's at least two days a week at court. And then you're also going in for your group sessions everyday. So, a lot of clients fail." They also talked about situations in which missing one court appearance led to an arrest warrant. According to participants, these requirements put defendants at risk of breaching and being incarcerated, disrupting the very rehabilitation process that the DTC aims to facilitate. Interviewees explained how marginalized PWUD often risk violating their conditions due to the lack of adequate support and precarious life circumstances. They explained how strict conditions further criminalize and also marginalize individuals who are already vulnerable. Recalling her work with a DTC, Melody explained: "most clients are homeless or precariously housed and living in poverty. So, it's a combination of stuff that makes it hard for them to complete the program. Then they're penalized for not completing it." Defence counsel worry because they know that any breach of bail conditions can trigger consequences for future interactions with courts, amplifying perceptions of risk, and driving punitive outcomes in the process.

[17] Original: "En plus, les accusés doivent s'engager à plaider coupable à toutes les charges alors que des fois, on n'a même pas les rapports d'expertise [...] tu sais, c'est [...] c'est complètement invraisemblable. C'est comme [...] de trop vouloir faire du bien...je pense que c'est pernicieux. Des fois avec ces programmes, l'intention est noble, mais c'est trop encombrant et le carcan est trop serré."

[18] Original: "c'est interminable."

https://doi.org/10.1017/cls.2024.34 Published online by Cambridge University Press

They expressed reservations about the demanding conditions of release, expectations and mandated court and therapy schedules of DTCs. Most explained that the conditions imposed are unrealistic for marginalized PWUD. More specifically, curfews, weekly drug testing and mandatory group sessions are imposed. Montreal lawyers criticized the stricter abstinence requirements, describing how participants risk expulsion whenever they relapse. Toronto lawyers told us about DTC clients being held in jail to get "taught a lesson" if they relapse or breach conditions. Participants noted that this is out of step with evidence-based practices that focus on supporting PWUD, recognizing how common relapse is and how damaging it can be for DTC clients to get punished and held in jail, let alone kicked out of the programme. Like Ophélie, several defence lawyers worried about how bail conditions in DTCs leave "zero margin of error" for PWUD.[19] Relatedly, Danielle expressed frustration: "you can do all that work, then one relapse and everything comes crumbling down."[20]

Some participants talked about being less critical of DTC programmes in which rules around compliance and abstinence are flexible and individualized. For example, Toronto participants explained that clients do not get kicked out for relapse. Some called for even more adapted conditions, to better centre harm-reduction principles. Lauren explained: "Clients relapse. Clients have bad weeks, bad months. It doesn't mean that they're not progressing. It just means that their progress isn't linear." Sensitive to complexities of recovery as a nonlinear process, they told us about the need for a more realistic and less punitive approach.

Participants highlighted the pathologizing and paternalistic aspect of DTCs. Some emphasized how they fail to actually individualize the programme for each accused, resorting to automatic conditions of release and standardized group sessions. They noted how clients have access to predetermined temporary support, which is often insufficient and not culturally or gender appropriate. Indeed, DTC clients are given little autonomy to create the plan that *they* perceive as the most appropriate for them. This standardized approach can be incompatible with how PWUD want to or are able to change how they use. Participants almost unanimously stressed that the DTC model blames, stigmatizes and punishes PWUD, while saying or doing little to address larger societal and systemic factors that contribute to drug use and related criminalization, such as housing instability, social isolation or unemployment.

3. Using DTC principles in "regular courts"

As we have illustrated, some participants see DTC programmes as unsuitable and unfavorable for marginalized clients. However, participants who work in private practice reported being inspired by and borrowing from DTC programmes to adapt their practices in *regular* courts. This was described as a set of practices that provided advantages by (1) buying more time, (2) considering the client and their issues more

[19] Original: "Il y a pas de droit à l'erreur pour les toxicomanes."

[20] Original: "Pour arriver au bout du compte où une personne fait une rechute puis tout le château s'écroule."

https://doi.org/10.1017/cls.2024.34 Published online by Cambridge University Press

holistically and (3) adapting to normative expectations in criminal courts around therapeutic goals, personal transformation and the importance of rehabilitation.

3.1 Buying more time

Some participants told us that they negotiate for extended bails, delaying sentencing—aka waiving 11B rights—in order to give clients time to demonstrate their willingness and ability to comply with judicial requirements. We heard that accepting and encouraging therapeutic bail conditions without resorting to official DTC programmes can help defence counsel to negotiate more effective plea bargains—doing this without locking in a guilty plea first. Cooper explained that he prefers to "do all this stuff up front," hoping to negotiate a noncustodial outcome later on. His goal is for clients to avoid pleading guilty, while managing to secure a lenient outcome. Like him, other lawyers turn to informal therapeutic justice practices when clients are able to access necessary interventions.

Lawyers who engage in informal therapeutic justice usually show a very high level of involvement and take care of tasks that would normally have been carried out by social workers within the framework of formal programmes. Several reported locating and contacting resources, supporting their clients with transport, negotiating waiting lists, completing application forms, collaborating with stakeholders and offering emotional support. Riley explains:

> I'm basically writing a treatment program. I'm sending him worksheets with questions like: "What are your goals? What are 5 things that you can do this month to get you to that goal?" He's also working with other treatment providers and doing residential treatment. There's a big gap, so I just fill it by coming up with a treatment program myself.

Others, too, talked about taking on extralegal tasks during the informal therapeutic justice process. One even explained that he hired a social worker to join his practice to support the work that he can do in court.

Some explained that, in contrast, marginalized accused who rely on self-representation or duty counsel support cannot afford the same opportunities for informal therapeutic justice, as they face different pressures to plead guilty quickly and cannot get the same kind of intensive support. Good private market options for detox or rehab are rare and exorbitantly expensive, but people who are able to pay can get access to some type of residential programmes. On the other hand, for PWUD who rely on publicly funded programmes, waitlists for residential programmes are long and very difficult to navigate.

Outside specialized courts, embracing therapeutic justice is not always possible. As Valentin put it, legal actors have to be receptive to informal arrangements: "So it's a matter of making sure we appear in front of the right judge for the bail hearing." Then:

> Ideally, the judge will say "OK, I'll release you directly to treatment and keep an eye on you". In the end, the judge will have witnessed this person

https://doi.org/10.1017/cls.2024.34 Published online by Cambridge University Press

> working hard and doing well, checking in every few months. Then the court might be more willing to consider a hybrid or noncustodial sentence. It's something we do a lot.[21]

Participants in both cities reported that it can be advantageous to request adjournments, to invest in theory, to find informal resolution for PWUD without having their cases sent to a DTC.

3.2 Considering the client and their issues more holistically

Participants explained that informal therapeutic justice allows more opportunity to consider PWUD holistically and to adapt the legal process to clients' specific situations. According to them, informal negotiations limit intrusiveness into the client's private life. For those who can borrow selectively from DTC practices, it means less surveillance, no automatic drug testing and flexibility regarding what therapies and treatments might be best, considering financial questions, but also preferences and availabilities. Informal therapeutic justice also promotes client agency, as Cooper's describes here:

> I prefer informal diversion so much because it's less intrusive on the client's life. We can map our own, individualized path. They can choose the supports that they think are good for them rather than just sitting down with the social worker who's going to give them a list of programs to choose from or tell them that this is what they have to do.

Informal therapeutic justice was lauded for adapting to the preferences of clients who were navigating issues related to both conflict with the law and the use of drugs. Some explained that access to private support provides the opportunity to find therapies that better match clients' personal goals (abstinence, recovery work, harm reduction, etc.) and intersecting needs (language-, gender-, culture-, disability-related, etc.).

3.3 Adapting to normative expectations in criminal courts

Elements of therapeutic justice have been routinized by legal actors, who are now accustomed to using these logics to manage perceptions of risk and rehabilitation to make decisions about case processing. As a result, some private defence lawyers have developed in-house protocols, such as questionnaires with specific questions that are related to social precarity/marginalization or drug use. These questions target aspects such as objectives, motivation and personal

[21] Original: "Il y a des juges qui sont plus enclins que d'autres à remettre en liberté des gens en thérapie fermée [...] souvent ce qu'on fait c'est qu'on s'organise pour faire l'enquête caution devant le bon juge. Idéalement le juge dit, bien monsieur madame, je vous libère en thérapie fermée, mais je vais garder un œil sur vous [...] à la fin, le juge il aura vu cette personne-là pendant un an à chaque deux mois, la personne maintient ses acquis, elle fait tout le processus [...] à ce moment-là, la cour va être beaucoup plus encline à donner une sentence qui est souvent hybride, qui évite la détention ferme, c'est vraiment quelque chose qu'on utilise souvent."

https://doi.org/10.1017/cls.2024.34 Published online by Cambridge University Press

resources, offering a more detailed portrait of the client that can be used in negotiations.

Relatedly, a few participants told us about situations in which judges set up their own informal drug court. Riley described:

> What he will do is have the client enter a plea, not sentence them, put them on a bail and have them come back and check in with him every week or two about the progress of that bail, and it's basically with the Drug Treatment court, but it's not restricted, it's being done by a judge, with the idea that if, at the end, they're doing well, he's going to give them a more lenient sentence, and if they're doing more poorly he'll give them a harsher sentence.

This scenario, of course, describes an informal diversion in which the plea is still "locked in." According to some, this is a creative and more flexible strategy for better responding to the needs of PWUD, considering the numerous limitations of both DTCs and the broader legal and health systems. Private lawyers who take on legal-aid certificates underscore yet another concern: the remuneration that they receive for providing twelve to twenty-four months of support to clients in DTCs is grossly inadequate. Their compensation is misaligned with the level of commitment and time investment required. For instance, we heard from several participants in both provinces how they got paid an insufficient amount as a block fee, which does not reflect the amount of hours involved in getting their client to do the programme. The disconnect between compensation and perceived effort creates a situation in which lawyers may be disincentivized from representing clients in DTCs or from facilitating informal therapeutic justice during the bail stage. Relatedly, participants brought up how seniority, prestige, reputation and networks—field-specific capital—make prosecutors inclined to listen to their arguments in favor of extended therapeutic bail practices. As they put it, negotiating around the legal relevance of social and therapeutic needs requires mutual trust, recognition and sometimes a distancing from the adversarial nature of the legal process.[22] When it comes to therapeutic justice, the types of intersecting (dis)advantages that are faced by both a defence lawyer and the clients they represent shape which strategies become available.

IV. Discussion and conclusion

Drawing upon in-depth interviews with ninety-eight criminal defence lawyers who represent marginalized PWUD, this paper examined how defence counsel talk about and engage with DTC programmes. We described what they reported as the merits and drawbacks of these programmes and showed how defence counsel borrow from DTCs in the context of traditional court proceedings.

DTCs are commonly promoted as a more benevolent way to address intersections between offending and drug use, housing insecurity and other social issues. Our interviewees spoke with appreciation about the collaborative team

[22] This is part of what DTCs try to facilitate via dedicated teams.

https://doi.org/10.1017/cls.2024.34 Published online by Cambridge University Press

approach of these programmes, which creates a more supportive court environment and provides marginalized PWUD with housing and social services support that they could not otherwise access. We heard about how DTCs can work well for compliant, motivated people who are the "perfect fit" or who are, as Moore and Hirai (2014) put it, either "true believers or good performers." When the fit is right, helping clients through DTCs can be part of a "zealous defence," with counsel doing whatever it takes to get a better outcome for their client, even if it means pursuing therapeutic justice and working with clinical teams (see also Van Cleve 2012; Moore 2007). Yet, ironically, it was defence lawyers who had not worked directly with DTCs who were the most optimistic about their potential. They talked about wanting better solutions for their clients who use drugs and are criminalized, and hoped that DTCs could provide them.

Our findings suggest that many defence lawyers support the broader therapeutic goals that underlie DTCs but are critical of legal aspects of the programme that undermine the defendants' rights to be presumed innocent and to a fair trial, and exacerbate their risk of being controlled via punitive court conditions. Participants voiced concern about the stringent admission criteria, which tend to exclude those with the highest need for services and support yet who are often the least able to secure such support outside of the criminal justice system, such as those with complex intersecting needs, gang affiliation or violent criminal records. For those select clients who *are* eligible for DTC intervention, it is still difficult to comply with programme expectations. In fact, the vast majority of DTC participants (about 80%) do not graduate successfully (Government of Canada 2021).

For therapeutic actors who are involved in DTCs, success may be defined by factors other than graduation—improved housing stability, harm-reduction practices related to drug use, contact with health care, etc. But, for the criminal defence lawyers whom we spoke to, the legal ramifications of using courts to access conditional therapy are concerning. Lawyers expressed concerns that marginalized PWUD find themselves compelled to plead guilty and accept stringent conditions of release because they are unable to afford anything else. They explained how this sets them up for breaches, programme expulsion or a worsening criminal record, impacting bail release or sentencing in the future. Some of our participants described the experience of PWUD in DTCs in ways that evoke notions of "dispersing degradation" (McNeill 2019) and show how courts can contribute to worsening injustice (Clair and Woog 2022). Ultimately, marginalized PWUD face barriers in accessing justice, housing, rehabilitation and other social support. While DTCs facilitate access to support, defence lawyers report legal drawbacks. Many called for shifts away from punitive control, towards improving access to a variety of voluntary harm reduction and recovery-focused support, thereby enhancing PWUD's well-being and ability to avoid future conflict with the law.

Interviews also highlighted concerns that the narrow admission criteria for DTCs mean that certain people who are multiply marginalized tend to be excluded by Crown attorneys who are in charge of the screening.[23] Recent

[23] Screening practices are ever-evolving. The Public Prosecution Service of Canada recently had their guidelines updated and some of the eligibility criteria were softened (PPSC 2022).

https://doi.org/10.1017/cls.2024.34 Published online by Cambridge University Press

national evaluations suggest that the average participant in Canadian DTC programmes is male (74%) and White (55%), with a mean age that ranges from thirty to thirty-nine (Government of Canada 2021, 11). Indeed, women, Indigenous and Black individuals, as well as young people, are underrepresented in DTCs. These exclusions were explained by a variety of factors, including the fact that, for some groups—such as women or people with certain disabilities—there might not be suitable community support that is able to collaborate with the DTC. Also "individuals from under-represented groups may be unwilling to participate due to distrust of the justice system" (ibid., 16). Also, racialized groups may be "targeted more by police and may be more likely to be seen as connected with a 'gang' and/or be charged with committing a 'violent' offence (e.g. resisting arrest) than members of other groups" (ibid.). For some of our participants, the biggest problem with DTCs is their selective nature.

In the context of DTCs, the imposition of a guilty plea sheds light on entrenched systemic issues within the criminal justice system—in particular, the problem that marginalized people face greater pressure to accept plea deals and onerous conditions (Kellough and Wortley 2002; Sylvestre et al. 2019). Some of our participants' reluctance to recommend these programmes to their clients stems from this obligatory guilty plea, which infringes on the fundamental right to the presumption of innocence and obstructs their ability to advance a legal defence. Our findings support what Woolley argues: "hard questions [around plea bargaining] arise because of the nature of the legal and ethical duties that lawyers owe to their clients when combined with the structural frailties in the justice system that make it impossible for those lawyers to fulfill all of their legal and ethical duties simultaneously" (2016, 1196).

While participants were critical of DTCs, our findings also indicate how and why they borrow from DTC models and practices to develop their own strategies, while trying to avoid rigid or punitive aspects that could set up a breach or undermine a productive plea negotiation. This, of course, contributes to managerial justice in which criminalized people are "marked," "hassled" and "made to perform" while under court-ordered supervision in the community (Kohler-Hausmann 2018). In the case of PWUD, DTCs (re-)shape defence options, creating new considerations and challenges. Some of our participants explained that, as they have so few good options, they simply cannot afford to dismiss what might provide an advantage for their clients.

When their clients have access to supports, defence counsel are sometimes able to propose a therapeutic plan (such as going into residential rehab) and avoid locking in a guilty plea. But this is not always possible and personalized plans, usually crafted by private practice lawyers, frequently entail reliance on private resources. Participants noted these private, in-patient rehab supports are costly, ranging from $5,000 to $10,000 for shorter programmes and up to $35,000 or more for a longer stay. Even for people who are eligible for services through welfare or disability, waitlists and a lack of adapted programmes can be barriers. The reality is that this type of supported, yet informal, therapeutic diversion remains beyond reach for most. The exclusion of marginalized individuals from crucial support systems pushes them towards punitive options: pleading guilty or suffering in detention.

https://doi.org/10.1017/cls.2024.34 Published online by Cambridge University Press

Despite ongoing debates surrounding the legalization and decriminalization of drugs in Canada and despite increased calls for more safe supply and support for harm reduction, PWUD are too often in conflict with the law. To make matters worse, criminalized and marginalized PWUD face stigma and lack of access to affordable and comprehensive social services support in the community. The magnitude and seriousness of this problem have been exacerbated by concurrent and harrowing drug toxicity and housing crises. PWUD continue to find themselves punished, stigmatized and deprived of access to essential and life-saving care. Still, for some, involvement in the criminal justice system provides one of the only avenues for support and treatment. Our findings raise questions related to society's tendency to allocate more resources to punitive measures that target PWUD, such as law enforcement, courts and surveillance, as opposed to proactively supporting individuals with access to essential resources that have the potential to facilitate clients' desistance from criminal activity and long-term wellness and stability. Our analysis underscores that many defence counsel want to see affordable and accessible rehabilitative programmes that are *independent* from the judicial system.

Echoing calls from numerous social-legal scholars (Hannah-Moffat and Maurutto 2012; Kohler-Hausmann 2018; Sylvestre et al. 2019), criminal defence lawyers point to how the criminal legal system can expand its reach, exporting notions of risk management and compliance to health care and social work. The findings that we report draw attention to the heterogenous nature of the social controls that are experienced by marginalized PWUD who are in conflict with the law (see also Winter and Clair 2023). They also highlight the frustration of defence lawyers struggling with the injustice that they bear witness to (Baćak et al. 2024) and are so often powerless to do much about (Slee 2023). We encourage future research to clarify when and how defence counsel can best help PWUD to avoid onerous conditions at bail while accessing the community-based support that they need to be well and to avoid contact with police, courts and prisons.

References

Baćak, Valerio, Sarah Esther Lageson, and Kathleen Powell. "The Stress of Injustice: Public Defenders and the Frontline of American Inequality." *Social Forces* (2024 in press).

Bellot, Céline, Élaine Lesage-Mann, Marie-Eve Sylvestre, Véronique Fortin, and Jacinthe Poisson. "Judiciarisation de l'itinérance à Montreal : des données alarmantes témoignent d'un profilage social accru." (2021) https://rapsim.org/wp-content/uploads/2021/01/VF2_Judiciarisation-de-litinérance-à-Montréal.pdf.

Bentley, Paul. "Canada's First Drug Treatment Court." *Commonwealth Law Bulletin* 25, no. 2 (1999): 634–47.

Bentley, Paul. "Drug Court." *Canadian Family Physician* 46 (2000): 982.

Berman, Greg. "Redefining Criminal Courts: Problem-Solving and the Meaning of Justice." *American Criminal Law Review* 41 (2004): 1313.

Bernier, Dominique. "Le droit pénal dans le continuum des soins de santé: Réflexions sur le rôle des acteurs du système judiciaire et sur les mécanismes de protection de l'usager de drogue ou d'alcool dans les formes de prise en charge thérapeutique." PhD Thesis, Université d'Ottawa/University of Ottawa 2017.

https://doi.org/10.1017/cls.2024.34 Published online by Cambridge University Press

Bernheim, Emmanuelle, Pierre Noreau, and Alexandra Bahary-Dionne. "La justice et la non-représentation au carrefour de la localisation sociale." *Canadian Journal of Law and Society* 36, no. 3 (2021): 405–25.

Bernier, Dominique, Céline Bellot, Marie-Eve Sylvestre, and Catherine Chesnay. *La judiciarisation des personnes en situation d'itinérance à Québec : point de vue des acteurs socio-judiciaires et analyse du phénomène*. Toronto: The Canadian Homelessness Research Network Press, 2011.

Birgden, Astrid. "Therapeutic Jurisprudence and Responsivity: Finding the Will and the Way in Offender Rehabilitation." *Psychology, Crime & Law* 10, no. 3 (2004): 283–95.

Braun, Virginia, and Victoria Clarke. "One Size Fits All? What Counts as Quality Practice in (Reflexive) Thematic Analysis?" *Qualitative Research in Psychology* 18. no. 3 (2021): 328–52.

Buckley, Ralph, and Douglas A. Bigelow. "The Multi-Service Network: Reaching the Unserved Multi Problem Individual." *Community Mental Health Journal* 28 (1992): 43–50.

Casey, Pamela, and David B. Rottman. "Therapeutic Jurisprudence in the Courts." *Behavioral Sciences & the Jaw* 18, no. 4 (2000): 445–57.

CCLA. "Set Up to Fail: Bail and the Revolving Door of Pre-trial Detention." 2014. https://ccla.org/wp-content/uploads/2021/07/Set-up-to-fail-FINAL.pdf

CCSA. "Drug Treatment Court FAQ's." 2007. https://www.ccsa.ca/sites/default/files/2019-05/ccsa-011348-2007.pdf.

CCSUA. "Opioids." Last accessed December 1, 2023. https://www.ccsa.ca/opioids.

Clair, Matthew. *Privilege and Punishment: How Race and Class Matter in Criminal Court*. New Jersey: Princeton University Press, 2020.

Clair, Matthew, and Amanda Woog. "Courts and the Abolition Movement." *California Law Review* 110, no. 1 (2022): 1–46.

Cohen, Stanley. *Visions of Social Control*. Cambridge, United Kingdom: Polity Press, 1985.

Earp, Brian D., Jonathan Lewis, Carl L. Hart, and Bioethicists and Allied Professionals for Drug Policy Reform. "Racial Justice Requires Ending the War on Drugs." *The American Journal of Bioethics* 21, no. 4 (2021): 4–19.

Fischer, Benedikt. "Doing Good with a Vengeance': A Critical Assessment of the Practices, Effects and Implications of Drug Treatment Courts in North America." *Criminal Justice* 3, no. 3 (2003): 227–48.

Fischer, Michael, and Brenda Geiger. "What 'Works' in Drug Court: A Bottom-Up Female Participants' Perspective." *Journal of Human Behavior in the Social Environment* 21, no. 7 (2011): 752–65.

Fortin, Veronique, and Isabelle Raffestin. "Le Programme d'accompagnement justice-itinérance à la cour municipale de Montreal (PAJIC) : un tribunal spécialisé ancré dans le communautaire." *Revue générale de droit* 47 (2017): 177–208.

Foucault, Michel. *Surveiller et punir: Naissance de la prison*. Paris: Gallimard, 1975.

Goddard, Tim, and Randolph R. Myers. "Against Evidence-Based Oppression: Marginalized Youth and the Politics of Risk-Based Assessment and Intervention." *Theoretical Criminology* 21, no.2 (2017): 151–67.

Gottfredson, Denise C., Brook W. Kearley, Stacy S. Najaka, and Carlos M. Rocha. "How Drug Treatment Courts Work: An Analysis of Mediators." *Journal of Research in Crime and Delinquency* 44, no. 1 (2007): 3–35.

Government of Canada. "Drug Treatment Court Funding Program Evaluation." 2021. https://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/2015/dtcfp-pfttt/toc-tdm.html.

Grecco, Gregory G., and R. Andrew Chambers. "The Penrose Effect and Its Acceleration by the War on Drugs: A Crisis of Untranslated Neuroscience and Untreated Addiction and Mental Illness." *Translational psychiatry* 9, no. 1 (2019): 320.

Hannah-Moffat, Kelly, and Paula Maurutto. "Shifting and Targeted Forms of Penal Governance: Bail, Punishment and Specialized Courts." *Theoretical Criminology* 16, no. 2 (2012): 201–19.

Halushka, John. "The Runaround: Punishment, Welfare, and Poverty Survival after Prison." *Social Problems* 67, no. 2 (2020): 233–50.

Harrison, Lana D. "The Revolving Prison Door for Drug-Involved Offenders: Challenges and Opportunities." *Crime & Delinquency* 47, no. 3 (2001): 462–85.

Hatt, Laura. "The Opioid Crisis in Canada: Parliament of Canada." 2021. Last accessed December 1, 2023. https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/202123E.

https://doi.org/10.1017/cls.2024.34 Published online by Cambridge University Press

Jackman, Martha. "*Protecting Health, Respecting Rights: Decriminalizing Drug Possession as a Constitutional Imperative*". Ottawa Faculty of Law Working paper No. 2022-23.

Kellough, Gail, and Scot Wortley. "Remand for plea. Bail decisions and plea bargaining as commensurate decisions." *British Journal of Criminology* 42, no. 1 (2002): 186–210.

Kohler-Hausmann, Issa. *Misdemeanorland: Criminal Courts & Social Control in an Age of Broken Windows Policing*. Princeton: Princeton University Press, 2018.

Lappiere, Matthew. "Montreal Needs Help Dealing with Homeless People, Drugs and Asylum Seekers near UQAM, Mayor Says." CBC News. February 22, 2023. Last accessed December 1, 2023. https://www.cbc.ca/news/canada/montreal/berri-uqam-homeless-drugs-roxham-1.6756267.

La Prairie, Carol, Louis Gliksman, Patricia G. Erickson, Ronald Wall, and Brenda Newton-Taylor. DTCs: A Viable Option for Canada? Sentencing Issues and Preliminary Findings from the Toronto Court." *Substance Use and Misuse* 37, no. 12–13 (2002): 1529–66.

Lavalley, Jennifer, Shelda Kastor, Jenna Valleriani, and Ryan McNeil. "Reconciliation and Canada's Overdose Crisis: Responding to the Needs of Indigenous Peoples." *Cmaj* 190, no. 50 (2018): E1466–E1467.

McNeill, Fergus. "Penal and Welfare Conditionality: Discipline or Degradation?" *Social Policy Administration* 54 (2019): 295–310.

Moore, Dawn. "Translating Justice and Therapy: The Drug Treatment Court Networks." *British Journal of Criminology* 47, no. 1 (2007): 42–60.

Moore, Dawn, and Hideyuki. Hirai. "Outcasts, Performers and True Believers: Responsibilized Subjects of Criminal Justice." *Theoretical Criminology* 18, no. 1 (2014): 5–19.

Myers, Nicole M. "The More Things Change, the More They Stay the Same: The Obdurate Nature of Pandemic Bail Practices." *Canadian Journal of Sociology* 46, no. 4 (2021): 11–36.

Nolan, James L. *Reinventing Justice: The American Drug Court Movement*. New Jersey: Princeton University Press, 2001.

Omori, Marisa, and Nick Petersen. "Institutionalizing Inequality in the Courts: Decomposing Racial and Ethnic Disparities in Detention, Conviction, and Sentencing." *Criminology* 58, no. 4 (2020): 678–713.

Public Prosecution Service of Canada (PPSC). "Public Prosecution Service of Canada Deskbook—6.1 Drug Treatment Courts—Guideline of the Director Issued under Section 3(3)(c) of the Director of Public Prosecutions Act." 2022. https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/tpd/p6/ch01.html#section_2_3.

Quirouette, Marianne, Kelly Hannah-Moffat and Paula Maurutto. "A Precarious Place': Housing and Specialized Court Clients." *The British Journal of Criminology*, 56, no .2 (2016): 370–388.

Resnik, Judith. "Managerial Judges." *Harvard Law Review* 96 (1982): 374.

Sabbeth, Kathryn. "Zeal on Behalf of Vulnerable Clients." *North Carolina Law Review* 93 (2015): 1475. http://scholarship.law.unc.edu/nclr/vol93/iss5/12.

Scott-Hayward, Christine. "Rethinking Federal Division: The Rise of Specialized Criminal Courts." *Berkeley Journal of Criminal Law* 22 (2017): 47.

Slee, Gillian. "Of the State, against the State: Public Defenders, Street-Level Bureaucracy, and Discretion in Criminal Court." *Social Service Review* 97, no. 4 (2023): 676–718.

Soss, Joe, Richard Fording, and Sanford F. Schram. "The Organization of Discipline: From Performance Management to Perversity and Punishment." *Journal of Public Administration Research and Theory* 21 (Supplement 2) (2011): i203–32.

Steering Committee on Justice Efficiencies and Access to the Justice System. "Therapeutic Courts in Canada: A Jurisdictional Scan of Mental Health and Drug Treatment Courts." 2021. https://icclr.org/publications/therapeutic-courts-in-canada-a-jurisdictional-scan-of-mental-health-and-drug-treatment-courts/.

Sue, Kimberly L., Shawn Cohen, Jess Tilley, and Avi Yocheved. "A Plea from People Who Use Drugs to Clinicians: New Ways to Initiate Buprenorphine Are Urgently Needed in the Fentanyl Era." *Journal of Addiction Medicine* 01;16, no. 4 (2022): 389–91.

Sylvestre, Marie-Eve., Nicholas Blomley, and Céline Bellot. *Red Zones: Criminal Law and the Territorial Governance of Marginalized People*. Cambridge: Cambridge University Press, 2019.

https://doi.org/10.1017/cls.2024.34 Published online by Cambridge University Press

Turnbull, Sarah, and Kelly Hannah-Moffat. "Under These Conditions: Gender, Parole and the Governance of Reintegration." *The British Journal of Criminology* 49, no. 4 (2009): 532–51.

US Department of Justice. "Drug Court Special Feature." 2023. https://www.ojp.gov/feature/drug-courts/overview.

Van Cleve, Nicole M. "Reinterpreting the Zealous Advocate: Multiple Intermediary Roles of the Criminal Defence Attorney." In *Lawyers in Practice: Ethical Decision Making in Context*, edited by Leslie C. Levin and Lynn M. Mather. London: University of Chicago Press, 2012.

Vrancken, Didier, and Claude Macquet. *Le travail sur soi : Vers une psychologisation de la société*. Paris: Belin, 2006.

Warner, Tara D., and John H. Kramer. "Closing the Revolving Door? Substance Abuse Treatment as an Alternative to Traditional Sentencing for Drug-Dependent Offenders." *Criminal Justice and Behavior* 36, no. 1 (2009): 89–109.

Weinrath, Michael, Kelly Gorkoff, Joshua Watts et al. "Accessing Drug Treatment Courts: Do Age, Race or Gender Matter?" *Australian and New Zealand Journal of Criminology* 51, no. 4 (2018): 619–37.

Weinrath, Michael, Kelly Gorkoff, Joshua Watts, et al. "A Quantitative Study of a Drug Treatment Court in a Western Canadian City: Post-Sentencing and Re-Offence Outcomes." *Canadian Journal of Criminology & Criminal Justice* 61, no. 4 (2019): 4–68.

Wexler, David B., and Bruce J. Winick. *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence*. Durham, NC: Carolina Academic Press, 1996.

Winter, Alix, and Matthew Clair. "'The Roughest Form of Social Work': How Court Officials Justify Bail Decisions," *Criminology* 61, no. 4 (2023): 904–928.

Woolley, Alice. "Hard Questions and Innocent Clients: The Normative Framework of the Three Hardest Questions, and the Plea-Bargaining Problem," *Hofstra Law Review* 44 (2016): 4–10.

Cite this article: Quirouette, Marianne, Cecília Batista, Nicolas Spallanzani-Sarrasin, and Katharina Maier. 2025. Drug Treatment Courts According to Criminal Defence Lawyers. *Canadian Journal of Law and Society / Revue Canadienne Droit et Société* 1–23. https://doi.org/10.1017/cls.2024.34

https://doi.org/10.1017/cls.2024.34 Published online by Cambridge University Press