

**Evaluation of the Expanded Duty Counsel Project:
Final Report**

for

Legal Services Society of BC



July 28, 2010

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I appreciate the thoughtful responses given by respondents in the various stakeholder interviews and in follow-up contacts. These respondents included three EDC lawyers, two judicial case managers, three Crown Counsel and two provincial court judges.

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EXECUTIVE SUMMARY

Introduction

In the spring of 2009 the Legal Services Society (LSS) developed an expanded criminal duty counsel model (EDC) to deal with four Category 1 offences on a pilot project basis in the Kelowna Provincial Court. The four offence categories are: breach of probation order (CCC733.1), failure to appear (145(2), (4) and (5)), failure to comply with a recognizance (145 (3), (5.1), and breach of conditional sentence order (742.6).

The pilot project began on June 12, 2009 and will run to March 31, 2011. The EDC includes two new services provided by a roster of three lawyers, one of whom is a staff lawyer¹, and two of whom are lawyers in private practice contracted to LSS:

- The provision of in- and out-of-custody duty counsel especially for the four charge categories listed above, one day per week (Monday)² to give advice to clients and determine cases to be set for guilty pleas and those to be set for trial, and to deal with any breach charges selected for disposition and scheduled on Mondays.
- The provision of in- and out-of-custody duty counsel for the same charge categories one day per week (Monday) in order to represent clients in court at trial, and to deal with any breach charges scheduled for disposition on Monday.

Methodology

Four methodologies were used to evaluate the EDC model. These include:

- Roll-up analysis of EDC activities recorded on the “Record of Duty Counsel Services” sheet that were maintained by the EDC lawyers.
- Interviews with stakeholders.
- An aggregate analysis of key indicators for the four charge categories compared by service type, location and time period, using the JUSTIN database of the Court Services Branch.
- A cost analysis of the EDC Kelowna model compared to the pre-EDC period in two locations (Kelowna and Prince George) and post-tariff change period where there is no EDC (Prince George).

Findings concerning service activity

The following are the primary findings related to service activity:

Extent of service

EDC offers substantial service to clients, as indicated by the following averages:

- 1.7 visits per client;
- 1.23 service visits per charge;

¹ As of March 26, 2010, the Kelowna Regional Centre of LSS was closed. EDC activity is being continued by the local agent, who was the former staff lawyer.

² The designation of Mondays for breach cases has been operative since February 2010. Prior to that the designated day was Friday. For convenience, the designated day will be referred to as Monday throughout this report.

- 91 minutes per charge;
- 108 minutes per client.

Client and case characteristics

- 92% are out-of-custody clients;
- 61% of charges are probation, 29% bail, 8% FTA, 2% CSO.

Service characteristics

- 40% of service visits are for advice, 34% for adjournments, 16% for guilty pleas, 6% for trial, 4% for sentencing, 2% for stays.

Qualitative feedback from stakeholders

The following feedback was received from three EDC lawyers, two judicial case managers, three crown counsel and two provincial court judges in Kelowna in one or more personal or telephone interviews.

Primary advantages of EDC in terms of service quality

- There is a focus specifically on breach cases;
- Assistance and representation is provided for trials;
- Client contacts with Crown are facilitated where appropriate;
- Advice and preparation for sentencing is provided;
- There is continuity of EDC counsel for clients;
- Effective use is made of court resources (cases with merit go to trial; more admissions so trial time spent on main issues).

Issues related to service provision

EDC cases were generally seen as being processed in an efficient and timely way. However, factors which were seen to impact timely dispositions included:

- A backlog of trial dates within the court system in the first months of the project.
- The fact that breach charges in many cases still remain attached to the lead charge, which tends to increase overall case length.
- The fact that EDC is operative on only two days per week, one of which is only for trial appearances.
- EDC provides more management of cases than do regular duty counsel, which may mean longer times to disposition while a client gathers necessary documents or information, or undertakes certain actions prior to trial or sentencing.

Findings from JUSTIN database

The main findings derived from JUSTIN reports are:

- Breach charges in Kelowna in period 2 (June 1, 2009 – November 30, 2009) remained roughly the same as in period 1 (June 1, 2008 – November 30, 2008) in terms of their percentage of overall provincial court criminal cases. They have fallen over the same periods in Prince George, but still remain higher than Kelowna overall.
- EDC breach cases in period 2 comprise only 12% of overall Kelowna breach cases. The primary reasons are that an estimated 30 – 35% are dealt with pro bono by counsel (either legal aid or private) as part of plea negotiations on lead charges, and 50 – 55% of accused are in custody on days when EDC is not operating, and tend to plead guilty after discussions with regular duty counsel.
- The overall number of breach appearances in Kelowna rose in period 2 compared with period 1, and did so at an even higher rate in Prince George. The most significant increase was in the EDC component of Kelowna cases. Likely contributors to this increase are the greater proportion of trials undertaken for EDC clients, and the fact that more service time and management of cases is undertaken by EDC than with regular duty counsel.
- The guilty plea rate for breach charges in Kelowna remained constant for period 1 and 2, and it is only slightly higher for EDC than for non-EDC cases. The rate is higher in Prince George.
- The time from charge to disposition in breach cases is considerably longer for EDC than non-EDC breach charges over the reporting period used in the study. However, this is primarily because all EDC cases were completed within the report time frame, but a significant percentage of non-EDC cases were still not complete. If a longer time period could be used for comparisons, the time to disposition for non-EDC cases would likely increase significantly.
- There is a significantly higher trial rate in EDC breach cases in period 2 than in non-EDC cases in Kelowna and Prince George from either period.
- The overall percentage of breach appearances at which duty counsel appears for the accused in Kelowna is higher in period 2 than in period 1, and is higher than in Prince George in both periods. A significant contributor to this higher percentage is EDC cases.

Cost analysis findings

A true comparison between the EDC and other legal service delivery models for breach cases is not possible because the units of service delivery differ substantially. However, in general, EDC services are being delivered at a reasonable cost. It appears that EDC services cost less than tariff services for concluded cases, guilty pleas and trials (although there are too few non-EDC trials to allow for meaningful costing). In general, EDC services cost more than regular duty counsel services, but again it is difficult to bring service units into any meaningful relationship.

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1.0 INTRODUCTION

In the spring of 2009 the Legal Services Society (LSS) developed an expanded criminal duty counsel model (EDC) to deal with four Category 1 offences on a pilot project basis in the Kelowna Provincial Court. The four offence categories are: breach of probation order (CCC733.1), failure to appear (145(2), (4) and (5)), failure to comply with a recognizance (145 (3), (5.1), and breach of conditional sentence order (742.6). The pilot project began on June 12, 2009 and will run to March 31, 2011.

Focus Consultants was asked to evaluate this project. The primary focuses of the evaluation were to determine:

- Whether the EDC helps move category 1 cases through the court system more quickly than with a “pure” tariff model of delivery or one in which only regular duty counsel are provided for these offences;
- Whether fewer appearances are involved;
- Whether accused persons are more frequently represented at appearances, pleas and trials;
- Whether EDC file maintenance procedures provide greater continuity and enhanced decision-making in breach cases;
- Whether court appearances are able to be conducted more efficiently; and
- What the costs of the model are.

Although this is the final evaluation report for this study, the pilot project will continue – as noted above – until March 31, 2011.

1.1 Summary Description of the EDC Project and its Predecessors

Below is a summary description of services that were provided by LSS for Category 1 offences in the year prior to the EDC, followed by those that are being provided in the EDC pilot period.

1.1.1 Pre-EDC period

On May 5, 2008 a practice direction for the Kelowna-Okanagan District of the Provincial Court was announced under Rule 3 of the Criminal Case Flow Management (CCFM) Rules. It provided for specific sittings in Compliance Court for the hearing of matters arising from the breach of court orders that had been filed in the Kelowna Registry and failure to comply with the CCFM.

During this pre-EDC period (May 5, 2008 – June 11, 2009), LSS provided in-custody criminal duty counsel service (Monday to Friday) and out-of-custody duty counsel service (Monday, Tuesday and Thursday), to deal with the general flow of cases, and some Category 1 offences. The vast majority of category 1 offences for clients that were financially eligible for legal aid were provided by private bar lawyers under the LSS criminal tariff referral system. LSS anticipated that the introduction of compliance court would impact the number of Category 1 billings since more charges would be resolved in court separate from the resolution of the substantive charge. According to LSS billing rules, counsel is entitled to bill the fee for charges heard at the same time at the higher offence code. Normally Category 1 charges which were heard at the same time as a substantive charge did not cost LSS additional funds. A greater number of Category 1 charges heard separate from the substantive charge would increase Category 1 billings.

In January 2009 LSS announced that it would no longer fund any Category 1 offences under the criminal tariff referral system for adult clients who applied after March 31, 2009 (except for possible exceptions for adult clients with mental disabilities). Where available, regular duty counsel would continue to handle Category 1 offences, except for trials.

1.1.2 LSS service in the EDC pilot period.

In Kelowna, LSS is maintaining the province's in-custody criminal duty counsel service (Monday to Friday) and the out-of-custody duty counsel service (Monday, Tuesday and Thursday), to deal with both the general flow of cases and, where time permits, with breach charges selected for dispositions on Mondays, Tuesdays and Thursdays. In this respect there is no change in practice. This component of current service delivery in Kelowna is referred to in the tables in section 4 of this report as the "non-EDC" component.

The EDC includes two new services provided by a roster of three lawyers, one of whom is a staff lawyer³, and two of whom are lawyers in private practice contracted to LSS:

- The provision of in- and out-of-custody duty counsel especially for the four charge categories listed above, one day per week (Monday)⁴ to give advice to clients and determine cases to be set for guilty pleas and those to be set for trial, and to deal with any breach charges selected for disposition and scheduled on Mondays.
- The provision of in- and out-of-custody duty counsel for the same charge categories one day per week (Monday) in order to represent clients in court at trial, and to deal with any breach charges scheduled for disposition on Monday.

1.2 Methodologies

Four methodologies were used in this study, as summarized below. Several of the methodologies are complex. To facilitate understanding of the data, the discussion of each methodology is presented together with the results in each section, rather than in a separate methodology section. The relevant sections in which methodology and results are discussed are shown in parentheses:

- Roll-up analysis of EDC activities recorded on the "Record of Duty Counsel Services" sheet that were maintained by the EDC lawyers (Section 2);
- Interviews with stakeholders (Section 3);
- An aggregate analysis of key indicators for the four charge categories compared by service type, location and time period, using the JUSTIN database of the Court Services Branch (Section 4);
- A cost analysis of the EDC Kelowna model compared to the pre-EDC period in two locations (Kelowna and Prince George) and post-tariff change period where there is no EDC (Prince George) (Section 5).

³ As of March 26, 2010, the Kelowna Regional Centre of LSS was closed. EDC activity is being continued by the local agent, who was the former staff lawyer.

⁴ The designation of Mondays for breach cases has been operative since February 2010. Prior to that the designated day was Friday. For convenience, the designated day will be referred to as Monday throughout this report.

2.0 DESCRIPTION OF SERVICE ACTIVITY OF EXPANDED DUTY COUNSEL

The three lawyers who served as expanded duty counsel for the project were asked to maintain records of selected activities on a "Record of Duty Counsel Service" sheet for all cases in which they were engaged. These data were recorded by service visit related to a particular charge, and included:

- Court case number
- Client name
- EDC counsel's name
- Date of service visit
- Status of client (in custody, out of custody)
- Breach charge involved
- Type of service provided (advice, adjournment, stay, guilty plea, sentencing, trial)
- Time spent on the service, by category (preparation, interview, attendance, administration)

Tables 1- 5 present aggregated data from these Record of Duty Counsel Service sheets for the period June 12, 2009 – April 21, 2010. They follow the same formats that were used in the mid-term report of February 2, 2010. However since the mid-term report only provided data to November 13, 2009, this section contains approximately twice the number of cases and resulting data as the earlier report. The overall volume of cases is now sufficient to provide confidence in the overall patterns, which are summarized under each table.

Table 1: Overview of clients, charges and service visits, June 12, 2009 to April 21, 2010

Data item	Clients	Charges	Service visits
Number of individual clients	112		
-number of clients with 1 charge	92	92	
-number of clients with 2 charges	15	30	
-number of clients with 3 charges	4	12	
-number of clients with 4 charges	1	4	
Total number of charges		138	
- number of charges involving 1 service visit		99	99
- number of charges involving 2 service visits		27	54
- number of charges involving 3 service visits		9	27
- number of charges involving 4 service visits		3	12
Total number of services, including repeat visits			192

Note: In cases where there were repeat visits of a single client who had more than one charge, two or more charges may have been dealt with at the same time. However, for data consistency, each have been counted as a separate service visit.

Summary data for Table 1 include the following:

- The vast majority of clients (81%, 112/138) involve 1 breach charge
- The average number of charges per client is 1.23
- 72% (99/138) of charges involve only 1 service visit; 28% (39/138) involve two or more.
- Overall, there are 1.7 visits per client (192/112)
- The average number of charges and service visits per client has slightly increased since the mid-term report.

Table 2: Status of client at time of service visit (counting clients only, N=112), June 12, 2009 – April 21, 2010

Status	Frequency	Percent
In custody	9	8%
Out of custody	103	92%
Total	112	100%

Points of note for Table 2 are:

- The vast majority of clients are out-of-custody. This has implications in terms of the extent to which the program is able to serve accused persons with breach charges, as discussed in the commentary following Table 7 (Section 4.2).
- This percentage has remained constant since the mid-term report.

Table 3: Breach charge (counting total charges only, N=138), June 12, 2009 – April 21, 2010

Charge	Frequency	Percent
CSO	2	2%
Probation	81	61%
Bail	39	29%
FTA	11	8%
Total	133 (NR=5)	100%

Note: Percentages do not total 100% due to rounding.

The primary pattern of note in this table is that over half the breach charges (61%) relate to probation. This percentage has risen from 52% in the mid-term report, but has likely stabilized.

Table 4: Type of service, June 12, 2009 – April 21, 2010

Type of service	Frequency of this service in overall service visits (N= 190; more than one service per visit possible)	Percentage of overall services
Advice	129	40%
Adjournment	110	34%
Stay	5	2%
Guilty plea	51	16%
Sentence only	12	4%
Trial	18	6%

Notes: 1) More than 1 answer possible
 2) This table is a breakdown of service activity, regardless of the number of times the same service might be offered on a repeat visit. If the same service is offered on different days for the same charge (e.g. advice or requesting an adjournment), it is counted twice.

Key patterns for Table 4 are:

- As was the case in the mid-term report, advice and adjournments are the two primary service types. It should be stressed that advice and adjournment services are frequently reported for the same charge, whereas the remaining services are not usually reported more than once.
- Although still very small, the percentage of trials as a service type has doubled since the mid-term report. This is likely because insufficient time had passed at the time of the earlier report for trials to have taken place. Although it is likely that this percentage has stabilized because of the increased number of cases and the overall passage of time, it is possible that it may increase to 7 or 8% of overall service visits.
- The total number of charges was 138. The percentage of non-repeating (i.e. excluding advice and adjournments) service types out of total charges was as follows: stay 4% (5/138); guilty plea 37% (51/138); sentencing 9% (12/138); trial 13% (18/138).

Table 5: Time spent on service activity, June 12, 2009 – April 21, 2010

Type of service activity	Total # of hours for each service activity	Percent of total service time	# of charges involving this service activity on at least one visit	Average time per charge involving this service activity
Preparation	38.0	19%	71	32 mins
Interview	80.3	40%	137	35 mins
Attendance	54.3	27%	124	26 mins
Administration	28.8	14%	104	17 mins
Total	201.4	100%	-	-

Notes: 1) If the same activity is undertaken in more than one occasion for the same charge, the two time periods are totaled for that charge.
 2) The average time per charge for all services is 90.9 minutes for 138 charges.
 3) The average time per client, regardless of number of charges, is 107.9 minutes for 112 clients.

The two main findings for Table 5 include:

- The primary service activity – interviewing clients – comprises approximately 40% of overall EDC time. This is down from 48% in the mid-term report (while preparation has increased from 11% in the mid-term report to 19%), but is likely now a stable figure.
- While comparative data for time per charge is not available for regular duty counsel (LSS does not track cumulative regular duty counsel time for individual charges), it is highly likely that the overall average EDC time per charge of 90.5 minutes is considerably greater than that which is provided through regular duty counsel. The same observation applies for the average EDC time of 107.9 minutes per client.

3.0 QUALITATIVE FINDINGS FROM SITE VISIT AND RESPONDENT INTERVIEWS

This section presents data from qualitative interviews during a site visit and in follow up interviews in succeeding months. The site visit was conducted in Kelowna on November, 2009. The intent was exploratory, allowing the evaluator to observe the dynamics of service delivery in context and to develop a sense of emerging issues or ways in which the model had been adjusted.

Site visit activities included:

- Interviews with all three EDC lawyers, two JCMs and one Crown Counsel (see Appendix 1 for questionnaire);
- Shadowing the coordinator of the EDC project as he interviewed and advised persons with breach charges, and/or assisted them in court. The reason for the evaluator's presence was explained to each client, and all gave permission to include him in interviews;
- Troubleshooting data quality issues. The main task was to follow-up cases that could not be located in JUSTIN. One of the JCMs was particularly helpful in this regard. Both EDC lawyers also helped with some data anomalies in the Record of Duty Counsel Services;
- Discussions with the EDC Coordinator about a JUSTIN data report.

In January/February 2010 telephone discussions were held with two federal crown prosecutors who handled drug related breach charges in Kelowna. In April 2010 follow-up interviews were conducted with two provincial court judges who had had significant contact with the three EDC lawyers, either in Compliance Court in Kelowna, or for trial and/or sentencing of EDC clients (see Appendix 2 for questionnaire). In May 2010 two judicial case managers responded by email to a series of supplementary questions about the project (see Appendix 3).

The themes discussed in the following sections relate to overall objectives, process issues, outcomes and related issues that were discussed with respondents during the site visit and follow-up interviews.

3.1 Respondents' Perception of Project Objectives

The primary objectives of the EDC identified by the respondents in regard to the four types of breach cases were:

- To provide to accused persons fuller advice than is possible with regular duty counsel, such that they are fully aware of possible outcomes and provide representation at trial;
- To provide more continuity of assistance to accused persons than is normally achieved by regular duty counsel;
- To provide a service previously provided under the tariff, but at lesser cost to LSS;
- To assist accused persons in breach cases to reach a disposition in a timely manner;
- To help encourage the effective use of court resources for cases with merit, rather than for defences with negligible chance of success.

These objectives represent the collective sense of the project held by the respondents, rather than the particular views of the LSS, whose primary emphasis is on the first three objectives.

3.2 Quality of Advice and Representation

Respondents provided several examples of ways in which they perceived the EDC model provides advantages to clients:

Focused attention on breach issues

- The scheduling of a dedicated time for EDC on Mondays for breach cases has meant that counsel can bring more focus to these cases than can regular duty counsel, who typically deal with a large number of accused on a range of issues. Some respondents felt that regular duty counsel activity often consists simply of “meeting and greeting,” giving out business cards and “shopping for clients.”

Assistance at trial

- Most regular duty counsel have insufficient time to provide trial advice to accused persons. This can mean that trials will be scheduled, but on the trial date, the accused simply pleads guilty. EDC not only provides trial advice, but can also represent the accused at trial. Some respondents felt that more trials were actually going ahead in EDC-assessed breach cases than in the (former) tariff-assisted cases. This appears to be the case, as will be shown in Section 4.2.5, and is likely for two reasons. Firstly, breaches are less frequently being subsumed in a plea arrangement with a lead charge. Because they are dealt with separately from the lead charge, more consideration may be being given to the possibility of a defence. Secondly, some respondents stated that under the tariff system, the scheduling of a trial was sometimes a matter of strategy rather than of an intent to proceed (see “effective use of court resources” below). This strategic practice is less likely to occur in EDC assisted breach cases, so those cases that are scheduled for trial likely go ahead.

Contact with Crown

- Accused persons assisted by EDC have also been able to talk to Crown, which is not possible for self-represented litigants, and is only infrequently done through regular duty Counsel. Crown disclosure is always possible with the assistance of EDCs.

Advice on sentencing or speaking to sentence

- Several respondents noted that the possibility of jail time is high for breach offences, in part because breaches are often related to drug offences (e.g. breaching red zone restrictions). In situations where clients intend to plead guilty, EDC can more fully discuss sentencing options and in some cases can speak to sentence. There is usually insufficient time for regular duty counsel to offer this type of support.

Greater preparation for sentencing

- Self-represented litigants often assume that Crown’s “initial sentencing position” is essentially the sentence they will get if they plead guilty. They do not understand that the judge decides the sentence, and therefore do not prepare for the hearing with possible options that will meet the court’s objectives in sentencing while at the same time allowing the accused to meet work, family or other objectives. The fuller consultations with the EDC lawyer allows them to consider a range of options. This may also lead the EDC lawyer to suggest to the accused that they plead guilty, but adjourn sentencing until the EDC can talk to a probation officer or alcohol and drug counsellor as appropriate, and then explain alternative options to Crown.

More information on possible defences

- Self-represented litigants in breach charges may not realize they have a defence that is relatively obvious. One respondent gave as an example an FTA charge for a date on which the accused was in custody.

3.3 Continuity

EDC have made concerted efforts to achieve more continuity of service to individual accused than is possible with the regular duty counsel system. Below are several factors aiding or impeding continuity that were identified by respondents:

Dedicated contact days

- The main factors aiding continuity are that there are a small number of EDCs involved, and that a consistent day (Monday) is dedicated to breach advice services (and Wednesday for breach trials). JCMs consistently encourage accused with breaches to seek out the EDC on Mondays, and the EDCs can relatively easily schedule a follow-up visit (if required) on a subsequent Monday.

Difficulty arranging pleas or sentencing on dedicated days

- Monday mornings are EDC's dedicated days for providing advice. It is frequently difficult to provide follow-up assistance to accused persons who have elected to plead guilty. This is because compliance court is held on Monday mornings and is set up for first appearances rather than guilty pleas. Wednesdays are the other days in which EDCs can provide assistance, but Wednesdays are normally for trial matters only. It is thus difficult to provide continuity of service for guilty pleas unless EDC can locate a judge with time to fit a summary guilty plea in his/her schedule on a Monday or Wednesday.

In-custody clients

- Another situation in which continuity is difficult is when an accused person who has been helped by the EDC lawyers goes AWOL prior to a scheduled hearing, and ends up in custody. In such instances he/she will likely be served by regular in-custody duty counsel rather than the EDC lawyer.

3.4 Reduced Costs to LSS

This theme was explored with several respondents in follow-up interviews. Findings are presented in Section 5 of this report.

3.5 Timely Dispositions

Respondents identified several factors that have negatively impacted the achievement of timely dispositions.

Backlog of trial dates

- Up until late October, 2008 (i.e. four months after the EDC project began) it was difficult to meet the objective of timely disposition where trials were involved. It had been hoped that breach trials could be scheduled for every second Wednesday, but this was not possible in the first two months of the project because of the overall backlog of available trial dates for regular trials. The difficulty was compounded by the fact that at least one of the EDC lawyers did not have an available slot for an EDC trial until several months after the first court date became available. Thus at times the objective of a timely disposition is in tension with the objective of continuity of service. Either the trial has to take place on a

later Wednesday when the EDC lawyer is scheduled to provide service, or the case has to be handed over to another EDC lawyer.

Only two dedicated EDC days

- Another factor that can mitigate against timely dispositions is that EDC activities are restricted to Monday mornings (and to Wednesdays for trials). Thus unlike private lawyers who can maintain contact with clients between appearances by phone or office appointments, and thereby move the case along, EDC lawyers generally arrange to see the accused in their next scheduled Monday of EDC activity. The pace can therefore be slower than for tariff lawyers.

Breaches attached to lead charge

- A third factor identified by respondents is that it appears that many breach cases are still not being severed from lead charges so that they can be dealt with separately and expeditiously. This is discussed more fully in Section 4.2, both in relation to the overall coverage of breach cases by EDC (Table 7) and in the discussion of time to disposition in breach cases.

Adjournments

- Typical circumstances that lead to adjournments and longer times to disposition are: 1) for the EDC lawyer to have discussions with Crown (e.g. about a sentencing plan); 2) for the accused person to locate a document of relevance to the case; and 3) strategically to allow the accused to achieve some level of stability (e.g. employment, fixed address, some DA treatment) that might be taken into consideration in sentencing. While these circumstances would also be typical in cases handled by lawyers on tariff, they are less likely to be factors with regular duty counsel cases because of the lower level of consultation and continuity that occurs. Thus in these situations it is plausible that EDC service could result in longer times to disposition than when only regular duty counsel services are involved.

3.6 Effective use of Court Resources

Respondents identified two ways in which EDC contributes to effective use of court resources.

Cases with merit

- The fuller advice that EDC lawyers are able to provide is perceived to have reduced the number of cases without merit going to trial. Some respondents felt that when represented by a lawyer on tariff, accused persons would be encouraged to request a trial in the hope that scheduled witnesses for the Crown would fail to attend and the case might collapse. If the witnesses did appear, the accused would plead guilty, but unnecessary court resources would already have been devoted to the case.

Admissions

- Some respondents noted that where trial is set for EDC cases, there tends to be more admissions because of the degree of consultation the accused has had with the EDC lawyer. This results in reduced trial time.

3.7 Factors Facilitating the Implementation of EDC in Kelowna

Respondents identified several factors that they felt facilitated the implementation of the EDC model in Kelowna. These included:

Quality of counsel selected for the project.

- Particular attributes that were considered important were their compassion for disadvantaged individuals, their sense of appropriate trials to run, and their extensive criminal legal aid experience.

Small size of the Kelowna bench.

- This means that judges know the counsel involved in projects such as EDC, and can accommodate them if they are double-booked, need an earlier court time, or need more court time.

Criminal Case Flow Management rules

- The reforms applied in the Kelowna provincial court to set breach cases within 30 days dovetailed well with the project objective of achieving disposition in a timely manner.

4.0 PROCESS AND OUTCOME FINDINGS FROM JUSTIN DATABASE

The third primary source of data in this evaluation was the JUSTIN database of the Ministry of Attorney General's Court Services Branch (CSB). This database combines selected data on the progress of criminal cases through the Provincial Courts. Section 4.1 describes the methodological framework for the analyses and Section 4.2 presents the resulting data.

4.1 Methodological Framework for the Analysis

There are two aspects to this framework. The first concerns the process and outcome indicators that were used, and the second is the type of comparisons that were made with other non-EDC service delivery models, both historically in Kelowna and geographically in Prince George.

4.1.1 Process and outcome indicators

In the original evaluation proposal it was intended that the indicators below would be used as process and outcome variables for EDC and comparison cases:

- # of new cases in period
- # of charges; # of counts
- mean and median time from charge to disposition; % in each time category by representation or non-representation
- # of appearances per concluded case, % in each category
- # and % of cases with guilty plea
- # and % of cases with trials

It should be noted that "case" is the only unit that JUSTIN can use to produce the requested data. A case is defined as "one accused person with one or more charges on an information that has resulted in a first appearance in Provincial Court." In almost all cases separate informations are laid for individual charges, so essentially a case can be equated with a charge. It is not possible to produce the required data by counts, but in all the EDC cases reviewed there have been no instances of multiple counts of the same charge. Thus this does not appear to represent a loss of data.

4.1.2 Comparison of EDC cases with non-EDC cases

The process and outcome indicators for EDC cases were compared with the same indicators for non-EDC cases using different service delivery methods, as shown in Table 6.

Table 6: Representation patterns in data comparisons

Location and time period for comparisons	LSS service delivery components	Comparisons based on representation patterns, for each indicator
Kelowna: EDC period (July 1 – Nov 30, 2009)	EDC component: Staff lawyer plus two lawyers in private practice contracted to LSS Non-EDC component: regular duty counsel	Cases served by: 1. EDC lawyers (from court file numbers) 2. Regular duty counsel 3. Self-represented litigants 4. Private counsel
Pre-EDC Kelowna Model (July 1 – Nov 30, 2008)	Regular duty counsel plus tariff counsel	1. Regular duty counsel 2. Self-represented litigants 3. Counsel (private and LSS tariff)
Prince George: pre-tariff change model (July 1 – Nov 30, 2008)	Regular duty counsel plus criminal tariff	1. Regular duty counsel 2. Self-represented litigants 3. Counsel (private and LSS tariff)
Prince George: post-tariff change model (July 1 – Nov 30, 2009)	Regular duty counsel only	1. Regular duty counsel 2. Self-represented litigants 3. Counsel (almost all private)

It should be emphasized that it is not possible to separate data clearly by type of representation. This is simply because accused persons may avail themselves of a different type of representation – or non-representation – at any given appearance. This fact is most clearly shown in Table 12 (Section 4.2.6), which shows that individuals that have at some point been served by EDC may have also had representation by a private lawyer, had an agent appear for them, or been self-represented at any given appearance. Thus when cases are defined in the tables as “EDC cases,” it simply means that there has been EDC involvement in the case. Furthermore, if there is a guilty plea or trial, there is no guarantee in the JUSTIN data that the EDC lawyer was present at that particular appearance. (See also the discussion of pleas in Section 3.3.)

4.2 Process and Outcome Findings

Tables 7 – 11 present key process and outcome findings derived directly from data supplied by the Court Services Branch using JUSTIN. Some format adaptations, additional calculations and supplementary labeling were provided by the evaluator.

4.2.1 Breach case volumes and ratios

Table 7 shows for two periods and court locations the overall volume of new provincial court cases, the ratio of breach cases to overall cases, and in Kelowna period 2, the overall number of LDC cases compared to overall breach cases.

Several patterns are evident in this table:

- There was an increase of 5% (25/469) in the absolute number of breach cases in Kelowna from period 1 to period 2, but new breach cases as a percentage of overall new criminal cases has remained the same (24%).

- In the comparison site of Prince George, the absolute number of breach cases has declined considerably (25%, 131/534), and the breach cases as a percentage of overall new criminal cases has fallen by 7 percentage points (35% to 28%). Nonetheless, the percentage of breach cases in relation to overall cases remained higher in Prince George than in Kelowna.
- These two patterns are similar for concluded cases in both courts.

Table 7: New and concluded cases

Location	Period	New cases			Concluded cases		
		Total new cases	Total new breach cases	Breach cases as % of total new cases	Total concluded cases	Concluded breach cases	Concluded breach cases as % of total concluded cases
Kelowna	1	1,940	469	24%	1,762	421	24%
Kelowna (total EDC and non-EDC)	2	2,092	494	24%	1,682	427	25%
Kelowna (non-EDC only)	2	2,035	437	21%	1,625	3,70	23%
Kelowna (EDC only)	2	57	57	100%	57	57	100%
Prince George	1	1,525	534	35%	1,382	468	34%
Prince George	2	1,439	403	28%	1,146	306	27%

Notes:

1. All data is preliminary and subject to change
2. Period 1 = June 1, 2008 to November 30, 2008.
3. Period 2 = June 1, 2009 to November 30, 2009.
4. Provincial Court Criminal New Case: One accused person with one or more charges on an information that has resulted in a first appearance in Provincial Court. These charges can be Criminal Code, Young Offender Act, other federal statutes or provincial statutes. This does not include traffic or municipal bylaw which are reported separately.
5. Breach Charge types = CCC 145, CCC 733.1 and CCC 742.6
6. Provincial Court Criminal Completed Case (Concluded Case): one accused person with a final disposition recorded against all of the charges on the information or ticket. Cases which are on outstanding bench warrants are not counted as completed cases.
7. EDC = Expanded Duty Counsel Cases. Note that these cases are new cases with which the EDC assisted from June 1, 2009 – November 30, 2009.
8. All statistics are based on new cases that start within the timeframe of period 1 or 2 (as applicable). All concluded cases are new cases that start within these time frames and conclude by February 28th, 2009 (for period 1) or February 28th, 2010 (for period 2).

Although these patterns are of interest as inter-site comparisons, the most striking data in the table is that the 57 EDC-assisted breach cases comprise only 12% of the 494 breach cases in Kelowna in Period 2.

This percentage is considerably lower than originally anticipated. To explore reasons why this percentage is so low, discussions were held with two EDC counsel, two judicial case managers, two Provincial Court judges, and three crown counsel (one for provincial matters, and two for the Federal Court). The cumulative feedback from these sources is qualitative, subjective and unfortunately not verifiable. All respondents were “close to the action” and each had specific windows through which they could assess the trajectories of breach cases. However, none had a complete overview. The JCMs were initially surprised at the large number of breach cases, and questioned the JUSTIN data. They sampled a week of criminal cases from their own records and found that it would translate into approximately the same volume of overall breach cases as reported in Table 7. They felt that a significant percentage of breach charges might be attached to a lead charge and so might be handled by legal aid counsel on a pro bono basis as part of negotiations with Crown on the lead charge, or handled in a similar way by private counsel. The three Crown were asked to make their best estimate of the percentage of breach charges that might be handled in this way. One estimated approximately 30%, another “at least 30%, and maybe more,” and a third “possibly as high as 80%”.

A second explanation was that most accused in breach charges are at least initially in custody. This explanation was advanced by one EDC lawyer who also acts as regular duty counsel. On a Monday just prior to the interview (when the dedicated EDC day was still Friday), he saw 15 accused persons in his capacity as regular (non-EDC) in-custody duty counsel. Eleven of the 15 had breach charges, and nine of these individuals did not get bail. In most of these cases he felt the accused would likely plead guilty on their own rather than wait 5 days in the Kelowna lockup to see EDC counsel for further advice on the Friday of that week.

Attempts were made to determine the percentage of overall breach cases where the accused was in custody either at first appearance or for all appearances. The Court Services Branch emphasizes that the “custody status” field is not mandatory, and is frequently unreliable. However, it appears that at first appearance approximately 60 – 65% of accused on breach charges are in custody at first appearance, and 50 – 60% are in custody when all appearances are considered. Even allowing for a wide margin of error in this data, since only 8% of EDC cases (Table 2) involve in-custody accused, it is likely that the scenario suggested by the lawyer acting as regular in-custody duty counsel is valid.

An analysis was also made of the day of the week that first or all breach appearances took place. This data item is relevant, because in the time period under consideration, Compliance Court occurred on Fridays, and EDC served clients on Fridays or – for trials – Wednesdays. Again, the JUSTIN data is not unequivocally clear, but a general pattern can be described. The problem is that “day of the week” data is available either for “first appearance” or for “all appearances,” but not for second appearances. An in-custody accused who wished to see EDC counsel on a Friday would likely have had a first appearance while still in lock-up, and then might have had a second appearance on Friday after seeing EDC counsel. In any event, only 18% of first appearances in breach cases (regardless of custody status) took place on Fridays. Thus it appears that a relatively small percentage of breach cases are arriving in Compliance Court.

Taking this combination of respondent estimates and imperfect data from JUSTIN, an estimate of the breakdown of breach case trajectories in Kelowna during the pilot project from June 12th to November 30th is as follows:

- 12% were assisted by EDC
- 30 – 35% were dealt with pro bono by legal aid counsel as part of plea on the lead charge or dealt with in a similar way by privately retained counsel;
- 50 – 55% of accused persons were in custody and pled guilty. In many cases they would have considered summary advice offered by regular in-custody duty counsel.

It should also be noted that, as will be shown in Table 12, duty counsel (including EDC and regular duty counsel) are involved in representation of accused persons in 35% of overall appearances. Given the presence of regular duty counsel on more days of the week than expanded duty counsel, it is not surprising that EDC involvement appears to be in the order of 12% of overall breach cases.

4.2.2 Appearances per case

An evaluation objective was to determine if fewer appearances were involved for breach cases in the EDC model. Table 8 shows that there have been more rather than fewer appearances using the EDC model. Specific patterns that are evident in the table are:

- That the overall average number of appearances in period 2 for combined EDC and non-EDC cases rose by 5% (from 5.6 to 5.9) over period 1
- They rose by 7% (from 4.3 to 4.6) between the same periods in Prince George.
- The most significant component of the increase in appearances in Kelowna was EDC cases. Compared to the former model in period 1 in Kelowna, the average number of appearances in EDC cases rose by 34% (from 5.6 to 7.5) versus by 2% for non-EDC cases.

There are three likely explanations for the higher number of appearances in EDC breach cases than in non-EDC breach cases:

- As will be seen in Section 4.2.5 (Table 11), the rate of trials is considerably higher for EDC cases.
- The very fact of a more “managed” case under EDC (compared to regular duty counsel) may contribute to more adjournments. For example, EDC might encourage a client to gather necessary documents or information useful to a sentencing process on a guilty plea (see also section 3.2).
- As shown in Section 4.2.1, EDC handled few in-custody breach cases, many of which may have resulted in a guilty plea with few appearances.

Of contextual interest, it is noteworthy that the average number of appearances in overall provincial court criminal cases was lower in period 2 than in period 1 in both Kelowna (5.0 in period 2 compared to 5.9 in period 1) and Prince George (4.0 compared to 4.8).

Table 8: Appearances per case

Location	Period	Total concluded breach cases	Total appearance on concluded breach cases	Appearances per concluded breach cases
Kelowna	1	421	2,368	5.6
Kelowna (total EDC and non-EDC)	2	427	2,525	5.9
Kelowna (non-EDC only)	2	370	2,099	5.7
Kelowna (EDC only)	2	57	426	7.5
Prince George	1	468	1,990	4.3
Prince George	2	306	1,411	4.6

Notes:

1. All data is preliminary and subject to change
2. Period 1 = June 1, 2008 to November 30, 2008.
3. Period 2 = June 1, 2009 to November 30, 2009.
4. Breach Charge types = CCC 145, CCC 733.1 and CCC 742.6.
5. Provincial Court Criminal Completed Case (Concluded Case): One accused person with a final disposition recorded against all of the charges on the information or ticket. Cases which are on outstanding bench warrants are not counted as completed cases.
6. Provincial Court Criminal Appearance: a date where there is court activity scheduled on a case for a specific reason (e.g., first appearance, judicial interim release, plea, preliminary inquiry, trial, sentencing, etc.). A scheduled appearance where the accused does not appear is counted as an appearance.
7. EDC = Expanded Duty Counsel Cases.
8. All statistics are based on new cases that start within the timeframe of period 1 or 2 (as applicable). All concluded cases are new cases that start within these time frames and conclude by February 28th, 2009 (for period 1) or February 28th, 2010 (for period 2).

4.2.3 Frequency of guilty pleas

Table 9 presents findings on the rate of guilty pleas in breach cases in both locations and time periods. This table indicates that:

- Guilty pleas are almost identical in Kelowna in periods 1 and 2. In Prince George they are higher by six percentage points in period 2 compared with period 1 (an absolute increase of 11%).
- The rate of guilty pleas is slightly higher for EDC cases (70%) than for non-EDC cases (66%).

Table 9: Rate of guilty pleas

Location	Period	Concluded breach cases	Guilty pleas in concluded breach cases	Percentage guilty pleas in breach cases
Kelowna	1	421	286	68%
Kelowna (total EDC and non-EDC)	2	427	286	67%
Kelowna (non-EDC only)	2	370	246	66%
Kelowna (EDC only)	2	57	40	70%
Prince George	1	468	249	53%
Prince George	2	306	181	59%

Notes:

1. All data is preliminary and subject to change
2. Period 1 = June 1, 2008 to November 30, 2008.
3. Period 2 = June 1, 2009 to November 30, 2009.
4. Breach Charge types = CCC 145, CCC 733.1 and CCC 742.6.
5. Provincial Court Criminal Completed Case (Concluded Case): one accused person with a final disposition recorded against all of the charges on the information or ticket. Cases which are on outstanding bench warrants are not counted as completed cases.
6. Guilty = A finding of Guilty as recorded in JUSTIN
7. EDC = Expanded Duty Counsel Cases.
8. All statistics are based on new cases that start within the timeframe of period 1 or 2 (as applicable). All concluded cases are new cases that start within these time frames and conclude by February 28th, 2009 (for period 1) or February 28th, 2010 (for period 2).

4.2.4 Time to disposition

Table 10 presents data on time to disposition for EDC and comparison service delivery types and locations. The mean and median times to disposition are both extremely sensitive to a) the overall number of cases in the sample, and b) the percentage of those cases that are complete. If cases of long duration are not completed within the reporting period, they cannot be included in time to disposition reports. This means that periods or locations with a significant number of in-completed cases will have time to disposition reports that understate the mean and medium times.

This concern is relevant to the results reported in this table, because although all 57 EDC cases that were initiated before November 30, 2009 were completed by the JUSTIN report date of February 28th, 2010, their counterparts in Kelowna and Prince George still had between 48 and 97 incompleted cases that could not be included in the report. If it had been possible to take a longer reporting period the report would have included more cases of longer duration for the non-EDC period 1 locations, and therefore the time to disposition results (especially for means) would have been longer.

The results initially appear counter-intuitive and contradictory: even though all 57 EDC cases are completed (even including trials), their median times to disposition are 3.5 times as long (68 days versus 19) as their non-EDC counterparts in period 2, and their mean times are twice as long (69 days versus 34 days). However, with 67 cases still left to conclude, and all of them a minimum of 90 days in length (i.e. from November 30th to February 28th), the non-EDC breach case means will likely increase significantly over the next year as these 67 cases are completed, while the median and mean figures for EDC cases will remain unchanged.

Other points of note in this table include:

- The median time for breach cases in Kelowna is similar in periods 1 and 2, and thus far the mean times are lower in period 2 for total Kelowna breach cases. Both figures can be expected to increase over the next year, but with 19 more non-concluded cases as of February 28th in year 2 than year 1 (67 versus 48), period 2 times can be expected to increase more substantially, and possibly exceed period 1 times when all cases are concluded.
- In Prince George median times are already considerably higher in period 2 than in period 1 (30 versus 22), and mean times are only marginally lower. With 31 more unconcluded cases as of February 28th in year 2 than year 1 (97 versus 66), it is likely that the period 2 means will eventually be higher than in period 1. The overall degree of increase from period 1 to 2 in Prince George may ultimately be greater than the anticipated increase in Kelowna.

Table 10: Median and mean time to disposition

Location	Period	Number of breach cases still not concluded	Median times (days)		Mean times (days)	
			Median time to disposition, all criminal and provincial court cases	Median time to disposition, breach cases	Mean time to disposition, all criminal and provincial court cases	Mean time to disposition, breach cases
Kelowna	1	48	31	28	89	56
Kelowna (total EDC and non-EDC)	2	67	25	29	48	45
Kelowna (non-EDC only)	2	67	-	19	-	34
Kelowna (EDC only)	2	0	-	68	-	69
Prince George	1	66	28	22	83	50
Prince George	2	97	21	30	49	48

Notes:

1. All data is preliminary and subject to change

2. Period 1 = June 1, 2008 to November 30, 2008.

3. Period 2 = June 1, 2009 to November 30, 2009.

4. Provincial Court Criminal New Case: One accused person with one or more charges on an information that has resulted in a first appearance in Provincial Court. These charges can be Criminal Code, Young Offender Act, other federal statutes or provincial statutes. This does not include traffic or municipal bylaw which are reported separately.

5. Breach Charge types = CCC 145, CCC 733.1 and CCC 742.6

6. Provincial Court Criminal Completed Case (Concluded Case): one accused person with a final disposition recorded against all of the charges on the information or ticket. Cases which are on outstanding bench warrants are not counted as completed cases.

7. Time to disposition = first date to conclusion date

8. EDC = Expanded Duty Counsel Cases.

9. All statistics are based on new cases that start within the timeframe of period 1 or 2 (as applicable). All concluded cases are new cases that start within these time frames and conclude by February 28th, 2009 (for period 1) or February 28th, 2010 (for period 2).

4.2.5 Trial rates

Table 11 provides data on the frequency of trials in breach cases in the two locations and time periods. It should be emphasized that the JUSTIN system only records whether a case is scheduled for trial prior to conclusion of the case, rather than whether the trial actually takes place. It can be assumed that for the cases in this report, trials would not likely have been scheduled later than February 28th, so these figures would represent the maximum number of trials that could have taken place. If one also assumes that the rate of cancellation of trials is similar in both locations and time periods, then the relationship between trial rates at each site and in each time period would be the same as that for trials scheduled.

Based on these assumptions, this table shows that:

- The rate of breach trials is only marginally lower in period 2 than in period 1 in both sites.
- The rate of breach trials in both periods is approximately twice as high in Prince George, as it is in Kelowna.
- The rate of breach trials in Kelowna EDC cases (25%) is significantly higher than in non-EDC cases (3%).

Most respondents interviewed in this study anticipated the last of these findings, as in non-EDC cases the accused would likely be pleading without legal assistance and/or while in custody.

Table 11: Rate of scheduled trials

Location	Period	Number of breach cases still not concluded	Breach cases scheduled for trial	Percentage breach cases scheduled for trial
Kelowna	1	469	28	6%
Kelowna (total EDC and non-EDC)	2	494	27	5%
Kelowna (non-EDC only)	2	437	13	3%
Kelowna (EDC only)	2	57	14	25%
Prince George	1	534	61	11%
Prince George	2	403	37	9%

Notes:

1. All data is preliminary and subject to change
2. Period 1 = June 1, 2008 to November 30, 2008.
3. Period 2 = June 1, 2009 to November 30, 2009.
4. Breach Charge types = CCC 145, CCC 733.1 and CCC 742.6
5. Provincial Court Criminal Completed Case (Concluded Case): one accused person with a final disposition recorded against all of the charges on the information or ticket. Cases which are on outstanding bench warrants are not counted as completed cases.
6. EDC = Expanded Duty Counsel Cases.
7. Breach Cases Scheduled For Trial = Cases that have an Appearance Reason of For Trial this does not mean the trial proceeded only that the case was scheduled for a trial prior to concluding.
8. All statistics are based on new cases that start within the timeframe of period 1 or 2 (as applicable). All concluded cases are new cases that start within these time frames and conclude by February 28th, 2009 (for period 1) or February 28th, 2010 (for period 2).

4.2.6 Representation at breach appearances

Table 12 presents patterns of representation at appearances in breach cases in the two locations and time periods. The table makes clear that – as noted in Section 4.1.2 – even for EDC – assisted cases, various forms of representation or non-representation can occur. It is likely that in many instances where “no counsel” is indicated in the “Kelowna (EDC only)” row, the EDC lawyers may nonetheless have assisted the individuals.

The primary patterns evident in this table include:

- Overall Kelowna breach cases in period 2 (which includes EDC cases as well) involve higher representation by duty counsel than in period 1, and higher than in either period in Prince George.
- The use of duty counsel at appearances in period 2 is significantly higher for EDC-assisted cases than non-EDC assisted cases (46% versus 32%)
- Both Kelowna and Prince George have shown an increase in the percentage of appearances by duty counsel from period 1 to period 2.
- The drop in private counsel from period 1 to period 2 is four percentage points greater in Kelowna than in Prince George.
- In period 2 in Kelowna, the use of private counsel is significantly higher in non-EDC assisted cases than in EDC-assisted cases (37% versus 24%).

Table 12: Representation at breach appearances

Location	Period	Agent appearances	Private counsel	Designated counsel	Duty counsel	No counsel	Total appearances
Kelowna	1	77 (3%)	1153 (49%)	18 (1%)	586 (25%)	534 (23%)	2,368 (100%)
Kelowna, (total EDC and non-EDC cases)	2	66 (3%)	875 (35%)	5 (0%)	877 (35%)	702 (28%)	2,525 (100%)
Kelowna (non-EDC only)	2	54 (3%)	774 (37%)	5 (0%)	680 (32%)	586 (28%)	2,099 (100%)
Kelowna (EDC only)	2	12 (3%)	101 (24%)	0 (0%)	197 (46%)	116 (27%)	426 (100%)
Prince George, all breach cases	1	68 (3%)	1088 (55%)	72 (4%)	322 (16%)	440 (22%)	1,990 (100%)
Prince George, all breach cases	2	56 (4%)	653 (46%)	23 (2%)	300 (21%)	379 (27%)	1,411 (100%)

Notes:

1. All data is preliminary and subject to change
2. Period 1 = June 1, 2008 to November 30, 2008
3. Period 2 = June 1, 2009 to November 30, 2009
4. Breach Charge types = CCC 145, CCC 733.1 and CCC 742.6.
5. Provincial Court Criminal Appearance: a date where there is court activity scheduled on a case for a specific reason (e.g., first appearance, judicial interim release, plea, preliminary inquiry, trial, sentencing, etc.). A scheduled appearance where the accused does not appear is counted as an appearance.
6. EDC = Expanded Duty Counsel Cases
7. Percentages do not necessarily total 100% due to rounding

5.0 COST ANALYSIS

This section presents a cost analysis of EDC cases, with contextual data relating to costs of private counsel and regular duty counsel from both Kelowna and Prince George. It should be emphasized that this analysis should not be seen as a cost comparison, but rather the provision of cost information on each of three models in which clients receive quite different levels and modes of service. Therefore there is no single comparable unit of service.

5.1 Definition of “case”

The delivery of service to persons with breach charges involves different definitions of and methods of counting “cases,” depending on whether the service is provided by private counsel, expanded duty counsel or regular duty counsel. Understanding these differences is critical in making cost analyses. Table 13 provides a definition of case for each type of service, specifically how cases are counted and what types of services are included.

Table 13: Definition of a Case, by Service Delivery Type

Service delivery type	Case definition
Expanded Duty Counsel	<ol style="list-style-type: none"> 1. A “case” includes one or more service visits (see Table 1) by a client who has one or more charges. If an accused makes several visits about the same charge(s), they are counted only as one case overall. 2. In instances where the accused needs to make a second or third visit, the EDC sets the next visit for a day when he will be in attendance. There is thus continuity of the case for the accused. 3. The main point of contact with the accused is at the courthouse. There are no office visits by accused between the EDC’s scheduled days in court. 4. In some cases there are telephone contacts with the accused between the EDC’s scheduled days in court. The EDC may also make contact with Crown, or with counselors etc, between their scheduled days in court, to communicate or verify relevant case information. 5. The service may involve advice only, assistance with adjournments, guilty pleas, stays, speaking to sentence or representation at trial (if eligible financially). 6. There may be many cases where EDC’s role is simply one of advice or assistance with an adjournment, and the accused may either subsequently retain private counsel or appear as a self-represented litigant. 7. Not all of the clients assisted by EDC would have qualified for a tariff referral under LSS’ previously existing rules.
Private (Tariff) Counsel	<ol style="list-style-type: none"> 1. Services may be bundled or unbundled, but likely in most cases counsel is retained to represent the client through to the conclusion of the case. 2. Counsel represents their client in all court appearances related to the charge(s), and contacts (e.g. with crown) on behalf of their client, meet with the client in their office, and have contacts by phone or other means with the client in between contacts at the courthouse. All these activities constitute one “case”; the service is therefore likely to be more comprehensive than that of EDC.
Regular Duty Counsel	<ol style="list-style-type: none"> 1. A “case” is simply a contact with an accused at the courthouse to provide advice, or assistance with an adjournment. If an accused is served by duty counsel on a subsequent occasion, he/she will be counted as a second or third “case.” The measurement unit is therefore different from EDC and tariff cases. 2. No services are provided by regular duty counsel on behalf of an accused outside of the DC’s scheduled time in court. 3. If an accused makes a second or third visit about the same case, there is no guarantee he/she will see the same duty counsel. There is thus no guarantee of case continuity.

5.2 Cost Analysis

An analysis of cost per case for each of the three service delivery models is presented in Table 14. It is essential that this table be interpreted in relation to the definition of “case” in Table 13, the notes to Table 14, and the description of the methodology for calculating EDC costs in Table 15.

The table indicates that:

- Notwithstanding that tariff services are more comprehensive than those of the EDC, the cost for concluded EDC cases is less than half that of tariff cases in the previous year in Kelowna ($\$153.88/\$344.43 = 45\%$), and a quarter that of tariff cases for a guilty plea ($\$94.36/\$354.94 = 27\%$). EDC costs per trial have averaged 52% of tariff cases in Kelowna in the previous year ($\$330.41/\633), but there are too few cases of either type for this comparison to be considered reliable. It should be noted that - as per the commentary accompanying Table 7 - in a significant portion of tariff cases breaches are likely disposed of pro bono as part of the plea arrangement on a lead charge. This practice would effectively lower the cost per case of tariff services, but the amount cannot be determined.
- Cost per case for tariff delivery of services in Prince George is generally higher than in Kelowna (ranging from 33% higher for CSO cases to 6% higher for the other three types of breach cases) in the same time period.
- EDC breach cases are more expensive than regular duty counsel cases of all types, but “cases” are counted very differently. As shown in Table 1, there are approximately 1.7 visits per EDC client. If this rate were applied to duty counsel cases and each visit were counted as a “case,” then the cost per regular duty counsel case would be \$69.70 (i.e. $1.7 \times \$41.00$). While still considerably less than the EDC cost per case, this comparison still does not incorporate the greater continuity involved in EDC case management, nor the fact that EDC involves trials and likely a higher rate of assistance with guilty pleas and sentencing than provided by regular duty counsel.
- Duty counsel costs in Prince George are considerably higher than in Kelowna in each of the two time periods.

The following observations based on Table 14 make comparisons concerning costs between EDC, tariff and regular duty counsel service delivery models, but as emphasized in Section 5.0 and 5.1, such comparisons are not intended to imply that there are common service delivery units for each model. The comparisons are simply a way of looking at the cost outcomes of each model.

Table 14: Preliminary comparison of cost per case for breach charges, by service delivery mode

Type and location of service	Period of analysis	Type of case	Cost		
			Per case	Per guilty plea	Per trial
Expanded Duty Counsel Kelowna	June 12, 2009 to March 31, 2010	All 4 breach case types	\$145.32 (N=105)	\$94.36 (N=44)	\$330.41 (N=14)
		Concluded breach cases only	\$153.88 (N=60)	\$94.36 (N=44)	\$330.41 (N=14)
Tariff Counsel Kelowna	May 5, 2008 to March 31, 2009	Failure to Appear	\$264.00 (N=3)	No cases	\$550.00 (N=1)
		Breach of Probation	\$351.00 (N=64)	\$566.00 (N=54)	\$601.00 (N=2)
		Failure to Comply	\$335.00 (N=19)	\$309.00 (N=13)	\$682.00 (n=3)
		Total of three case types above	\$344.43 (N=86)	\$354.94 (N=67)	\$633.00 (N=6)
	April 1, 2008 to March 31, 2009	Breach of CSO	\$190.00 (N=23)	Not available	Not available
Tariff Counsel Prince George	May 5, 2008 to March 31, 2009	Failure to Appear	\$130.00 (N=1)	No cases	No cases
		Breach of Probation	\$380.00 (N=64)	\$395.00 (N=48)	\$781.00 (N=3)
		Failure to Comply	\$355.00 (N=26)	\$352.00 (N=11)	\$706.00 (N=3)
		Total of three case types above	\$364.00 (N=91)	\$386.98 (N=59)	
	April 1, 2008 to March 31, 2009	Breach of CSO	\$251.00 (N=22)	Not available	
Regular Duty Counsel Kelowna	April 1, 2008 to March 31, 2009	All cases (Not just breaches)	\$41.00 (N=3524)	Not applicable	\$743.50 (N=6)
	April 1, 2009 to January 8, 2010	All cases (not just breaches)	\$40.00 (N=3634)	Not applicable	Not available
Regular Duty Counsel Prince George	April 1, 2008 to March 31, 2009	All cases (not just breaches)	\$72.00 (N=1957)	Not applicable	Not applicable
	April 1, 2009 to January 8, 2010	All cases (not just breaches)	\$59.00 (N=2178)	Not applicable	Not applicable

Notes:

1. The definition of a case differs considerably for each of the three service delivery modes. See Table 13.
2. The methodology for determining the cost of expanded duty counsel cases is described in Section 5.3
3. Breach types include breach of probation order (CCC 733.1), failure to appear (CCC 145(2), (4) and (5)), failure to comply with a recognizance (CCC 145 (3), (5.1)), and breach of conditional sentence order (CCC 742.6).
4. "Concluded" EDC cases only include cases where the record of duty counsel sheet indicated a guilty plea, trial, stay, or sentencing activity.
5. The time periods for the Kelowna cost analyses reflect the models used during the "pre-EDC period" and the "EDC period", as explained in sections 1.1.1 and 1.1.2. Regular duty counsel time periods are based on CMS reports for periods that are as close to those two periods as possible. The Prince George time periods are the same as those for Kelowna tariff counsel and regular duty counsel to facilitate comparison. The time period for Breach of CSO cases is based on annual data over a period similar to the other charges, but slightly longer to allow for more cases and therefore more reliable average costs (see also next point).
6. Breach of CSO are reported in a different manner in the CMS from the other breach charges, and are not available by guilty plea or trial. The average cost of combined breach charges only includes three case types for tariff cases, but 4 case types for EDC cases. However, in the period covered in this table there has been only 1 CSO which involved 0.7 hours of EDC time for advice and an adjournment, so for all intents and purposes, "all 4 breach case types" primarily concerns three case types. There were no breach of CSO cases among concluded cases.
7. Tariff counsel cost per case only includes stand alone breach charges.
8. Duty counsel cases include all criminal case matters. The number of contacts concerning breaches is not recorded, but the average cost per breach case is unlikely to be higher than the amounts shown.
9. Any average cost per case involving less than 12 cases (including most data for trials) cannot be considered reliable.
10. There were five concluded EDC cases that were stays, and they averaged \$154.43 per case. One of these cases was considerably more expensive (\$361.05) than the other four, which averaged \$103.

5.3 Methodology for Calculating EDC Cost per Case

The steps used to calculate EDC cost per case for the period to November 30th are shown in Table 15. The same procedures were used for calculating “cost per concluded case,” but that calculation includes only guilty pleas, sentencings, stays, and trials. Similarly, when calculating costs per guilty pleas and trials, the evaluator isolated those particular services on the Record of Duty Counsel Sheets (including previous visits for the same cases involving advice and/or adjournments).

Table 15: Steps Used to Calculate EDC cost per case

	Steps	Amount or calculation	Data source
1	Amount of invoices from June 12, 2009 to March 31, 2010 for two EDC counsel paid regular duty counsel fees	\$10,655.30	CMS Report
2	Determine EDC staff lawyer’s annual wages and benefits (at 20%), prorate for period June 12, 2009 to March 31, 2010	\$90,262.33	LSS records
3	Determine # of hours worked by staff lawyer on EDC cases to March 31, 2010, including additional EDC-related administrative time.	72.6 hours	Record of Duty Counsel Sheets; discussions with EDC staff lawyer
4	Calculate # of EDC hours as a percentage of total hours worked by EDC staff lawyer from June 12, 2009 to March 31, 2010 (203 days @ 7 hours = 1421 hours)	$72.6 \div 1421 = 5.1\%$	Discussion with EDC staff lawyer regarding application of 7 hours average
5	Calculate proportion of EDC staff lawyer’s salary devoted to EDC activity	$.051 \times \$90,262.35 =$ \$4,603.38	
6	Add #1 and #5 for total EDC cost	$\$10,655.30 +$ $\$4,603.38 =$ \$15,258.68	
7	Determine # of cases jointly handled by all three EDC lawyers from June 12, 2009 to March 31, 2010	105	Record of Duty Counsel sheets, with repeat visits amalgamated as single “cases”
8	Determine cost per case	$\$15,258.68 \div 105 =$ \$145.32	

6.0 CONCLUSIONS

The primary conclusions that emerge from the findings in this report are that:

- EDC involves a substantial service time investment with clients in breach cases (91 minutes per charge and 108 minutes per client).
- Stakeholders interviewed in the evaluation strongly support the project. They perceive advantages in terms of continuity of client service, the quality of advice and client support (including representation at trial, access to Crown, and preparation for sentencing), and the effective use of court resources.
- EDC-involved breach cases only account for 12% of overall breach cases, both because of a continuing tendency for many breach cases to be handled as part of plea on lead charges, and because many in-custody clients tend to plead guilty rather than wait for the dedicated EDC day to receive assistance.
- Time to disposition data available to date shows significantly higher mean and median times to disposition in EDC cases compared to other service delivery models. However, this data is likely to change as more non-EDC cases are completed.
- There is a significantly higher trial rate in EDC cases than any of the comparison models.
- In general, EDC services appear to be delivered at a reasonable rate. Because service units are not identical, direct comparison is not possible, but in general EDC completed cases cost less than tariff cases and more than regular duty counsel cases.

APPENDICES

- Appendix 1: Questionnaire for lawyers, judicial case managers, crown and judges
- Appendix 2: Questionnaire for judges
- Appendix 3: Follow-up questions for judicial case managers

APPENDIX 1:

EDC EVALUATION: INTERVIEW GUIDE

Objectives and logic of pilot

1. (all respondents) As you understand them, what are the objectives the EDC pilot project is attempting to achieve?
2. (all respondents) What are the main elements and activities of the project that have been put in place to achieve these objectives? In theory, do you think these elements and activities will lead to achievement of the objectives?

Implementation and adjustments

3. (all respondents, as applicable) What adjustments to the model (manpower, coordination, communication, etc) have been made since project start-up (June 12th), and why have they been necessary? Were these adjustments likely specific to the situation in Kelowna, or would they likely have to be considered if the model were to be implemented in other locations?
4. (all respondents) Are there particular factors which have made it a) easier, or b) more difficult to implement this model in Kelowna, compared to other court locations?
5. (JCM, crown, judge) Did the design of the project require you to adjust your schedule, or change other components of your work to accommodate, complement, or reinforce the EDC activities?
6. (EDC, regular DC) EDC and regular duty counsel are in many cases the same counsel acting on different days. Are there also additional regular duty counsel involved in Kelowna? Are efforts made to encourage continuity of case handling between counsel, and if so, how is this done?
7. (EDC) EDC was originally intended to provide representation for clients in court at trial (anticipated to require 2 hrs twice per month), and to deal with any breach charges scheduled for disposition on Wednesdays. Thus far there is no record of EDC activities taking place on Wednesday. Are there fewer trials than anticipated, and if so, why might this be the case?
8. (all respondents) How has shifting as many category 1 charges to Fridays affected scheduling and activities on other days?
9. (EDC) Is your time utilized as fully as was anticipated?
10. (EDC) Preliminary JUSTIN stats show that cases in which EDC has provided service also have appearances in which private counsel or no counsel at all are involved. Presumably some of the situations where no counsel is recorded are first appearances, and situations where private counsel were involved were likely subsequent to EDC involvement. Can you describe 4 or 5 typical "trajectories" that clients might follow that include EDC service(s) at one or more points? The intent would be to show how EDC services dovetail with those of private counsel, with regular duty counsel and/or with clients who are self-represented.

Impacts and outcomes

11. (JCM, crown, judge) What impacts have EDC services had on your work or situation, or more generally, on the efficiency of the criminal court process in Kelowna?

12. (all respondents) An analysis of cases with which EDC have been involved is being conducted using the JUSTIN database of Court Services Branch. This analysis will be of cases with date of charge between June 1st and Nov 30th, and will be completed in April 2010. While this will be a formal quantitative analysis, I am interested at this point in more subjective assessments of patterns you feel you are seeing in cases where there has been EDC involvement. For example, do you feel EDC involvement is impacting the number of appearances per case, the rate of guilty pleas, or the number of trials? If so, why does it contribute to the impact you describe?

13. (all respondents) Have there been any unanticipated outcomes or impacts?

Overall assessment

14. (all respondents) If you are able to make a comparison, how would you assess the strengths and limitations of this model thus far, compared to the former tariff model of coverage for breach charges, and to a regular duty counsel model?

15. (all respondents) Do you have any recommendations for improvements to any aspect of how the EDC model operates at present?

16 (all respondents) Do you have particular research issues or concerns that you feel should be addressed in the remaining phases of the evaluation of the EDC?

APPENDIX 2:

EDC EVALUATION: INTERVIEW GUIDE FOR JUDGES

Objectives and logic of pilot

1. As you understand them, what objectives is the Expanded Duty Counsel (EDC) pilot project (coordinated by Andrew Vandersluys to address breach charges) attempting to achieve?
2. What is your understanding of the main elements and activities the project has put in place? In theory, do you think these elements and activities will lead to achievement of the objectives?

Implementation and adjustments

3. Have you been involved in any communications or discussions about the model since the project was initiated (June 12, 2009)?
4. Are there particular factors which you feel may have made it a) easier, or b) more difficult to implement this model in Kelowna, compared to other court locations?

Impacts and outcomes

5. What impacts, if any, has the EDC project had on the efficiency of the criminal court process in Kelowna? Have there been any unanticipated outcomes or impacts?
6. An analysis of cases with which EDC has been involved is being conducted using the JUSTIN database of Court Services Branch. This analysis will be of cases with date of charge between June 1st and Nov 30th, and is being completed this month. While this will be a formal quantitative analysis, I am also interested in more subjective assessments of patterns you feel you are seeing in cases where there has been EDC involvement. For example, do you feel EDC involvement is impacting the number of appearances per case, the rate of guilty pleas, or the number of trials? If so, why does it contribute to the impact you describe?
7. Data from a mid-term assessment of the EDC suggest that the project deals with less than 20% of breach cases, despite EDC's regular availability in Compliance Court (originally on Fridays, now on Mondays) and for breach trials on Wednesdays. From interviews with several stakeholders, the reasons appear to be 1) that a large percentage (roughly half) of breached accused are initially in custody, will likely have seen regular in-custody duty counsel, and elect to plead guilty rather than wait for Compliance Court later in the week, and 2) a significant number of breach charges (perhaps a third) appear to be handled pro bono by counsel as part of a plea on a lead charge.

Do you have reason to confirm or question these interpretations? Do they impact your view of the utility of the role of EDC in relation to breach charges within the court system?

Overall assessment

8 If you are able to make a comparison, how would you assess the strengths and limitations of the EDC model, compared to the former tariff model of coverage for breach charges, and to a regular duty counsel model?

9. Do you have any recommendations for improvements to any aspect of the EDC's model of operations?

APPENDIX 3:

**EXPANDED DUTY COUNSEL EVALUATION:
QUESTIONS FOR JUDICIAL CASE MANAGERS**

1. In the mid-term evaluation it was estimated that only about 15 – 20% of overall breach cases are dealt with by the expanded duty counsel (EDC) project. Data since then has lowered this estimate to about 12% (57/494 of new breach cases in the period June 1 – Nov 30, 2009).

Based on discussions I have had with crown, JCMs (the two of you), EDC defence counsel, and more recently with judges, the rough estimate of where breach cases go would now appear to be as follows:

- 12 - 15 % are assisted by the EDC project
- 30 – 35% are dealt with pro bono by counsel as part of plea on the lead charge;
- 45 – 55% of accused persons are in custody and plead guilty. In many cases they will have considered summary advice offered by regular in-custody duty counsel, but they do not get the added support offered through the expanded duty counsel project unless they choose not to plead guilty prior to seeing Andrew, Wayne or West.

Considering the above feedback,

- a) Do you have any reason to feel that these estimates need to be adjusted (i.e. one or more of the categories seems too high or low), and if so, in what way, and why?
- b) Is there any further interpretation about the flow of cases you feel should be considered, i.e. maybe there is another category of cases we aren't thinking about?

2. Given these results, do you feel there is a ready way that more effective assistance (i.e. that would cover more cases) could be provided by the EDC project? Would certain procedures have to change in order to do this?

3. From the court's perspective, in terms of getting breach cases into Compliance Court to be handled on their own rather than having them tag along with the substantive charge, do these results suggest the need for further change, or is 30 – 35% (if accurate) still joined to the lead charge a reasonable percentage? If change is still needed, what procedures would need to be implemented?

4. JUSTIN data shows that of 57 breach cases with EDC involvement that were initiated between June 1 – Nov 30, 2009, all 57 (100%) were completed by Feb 28th (3 months after the period). Of 437 breach cases without EDC involvement in the same period, only 85% were concluded by Feb 28th. What would be your interpretation of this pattern, i.e. why are non-EDC cases likely to go on longer?

5. JUSTIN data shows that of the 57 EDC-assisted breach cases, 25% (14/57) were scheduled for trials. For non-EDC concluded breach cases, only 4% (13/370) were scheduled for trial. Does this difference surprise you, or is it roughly what you would have expected? What is the reason for your answer?

6. Do you have any other final comments about any aspect of the EDC project that you would like to make?