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Evaluation of the Criminal Early Resolution Contract

Final Report

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Prepared for: Legal Aid BC

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Table of Contents

Executive summary	i
1.0 Introduction	1
2.0 Overview of the Criminal Early Resolution Contract	1
3.0 Methodology	2
3.1 Online surveys of counsel	2
Survey 1: Counsel who had invoiced for a CERC	3
Survey 2: All counsel who have provided criminal legal aid (standard or CERC)	3
3.2 Document and LABC data review	4
Document review	4
Review of LABC data	4
Pre/post CERC comparison	4
3.3 Case studies	5
Key informant interviews	5
LABC data	5
Court data	5
3.4 Challenges and mitigating steps	7
4.0 Findings	8
4.1 Implementation	8
Use of the CERC	8
Client profile	10
Offences covered	10
Type of services provided to CERC clients	12
Request for extensions by counsel	14
Conversion to standard adult criminal contracts	18
Level of interest in taking CERCs	18
Timeliness of issuing CERCs	19
Change of counsel	20
Cost of completed CERC contracts	20
Awareness of the CERC	21
Overall level of support for CERCs and suggested improvements	22
4.2 Outcomes	23
Contribution to access to justice	23
Contribution to earlier resolution	29
Contribution to greater efficiency for the court process	30
5.0 Conclusion	34
5.1 Implementation	34
5.2 Outcomes	36
References	38

Appendix A – Evaluation Matrix

Appendix B – Survey Questionnaires

Appendix C – Interview Guide

Appendix D – Demographic of LABC Adult Criminal Applicants

Appendix E – Analysis of Abbotsford and Kelowna Provincial Court Data

Executive summary

Legal Aid BC (LABC) introduced the Criminal Early Resolution Contract (CERC) on May 15, 2019, as a method to expand its criminal legal aid services to clients who do not qualify for a full representation contract. The concept for the CERC is to provide low-income clients who are not otherwise eligible for full representation under LABC eligibility guidelines with the opportunity to have their case reviewed by a lawyer early in the remand process to determine if a resolution with the Crown might be reached and avoid using limited public resources on unnecessary criminal trials. Contracts cover all tariff items covered in standard full representation contracts, except preliminary hearing, pre-trial conference, and trial fees. The contracts cover all disbursement items and applicable travel authorizations.

LABC desired an evaluation of the CERC to assess its implementation and early outcomes. The evaluation covered approximately two years from the launch of the CERC (May 15, 2019) to May 31, 2021. A report for the first year of the evaluation focussed on the time period from May 15, 2019 to December 31, 2019 and provided information on early implementation of the CERC. This final evaluation report builds on the earlier report and includes information on outcomes using additional lines of evidence and a pre/post comparison of selected court locations. The evaluation included three lines of evidence:

- online surveys of counsel (counsel who have recently invoiced for a CERC and all counsel who have done work for LABC in a recent 12-month period)
- LABC data for adult criminal applications, CERCs, and adult criminal standard contracts
- case studies of two court locations (primarily information from key informant interviews)

The key findings of the evaluation indicate that the CERC is working as intended and has demonstrated early success.

Implementation

The evaluation found that the CERC continues to be working well in terms of its implementation and delivery since its launch on May 15, 2019.

- **CERCs are being increasingly utilized and fewer applications are being denied coverage.** Over its first two years, CERCs were issued in approximately 10% of adult criminal applications received by LABC. The proportion of refused applications declined, meaning that more applicants received legal aid assistance since the CERC became available. The issuance of CERCs has increased since the COVID-19 pandemic began, reflecting LABC's view that the CERC, as a service that is not court-based, provided an alternative when public health priorities required reduced personal attendance at courthouses. Key informants agreed that CERCs have been an effective mechanism to respond to the needs of the criminal justice system during the COVID-19 pandemic.
- **CERC clients are receiving a variety of services.** The types of services provided to CERC clients are what was anticipated for CERCs. Counsel most commonly assist clients by providing summary advice on their options, reviewing disclosures, and negotiating with the Crown to determine if the case can be resolved without a trial. The services provided to CERC clients could potentially be improved upon in a few areas. The evaluation found that most counsel are not providing referrals to other services and a minority are providing advice and information on how to self-represent to clients whose matter was not resolved by the CERC.

Recommendation: LABC should clarify its expectations related the services that they expect counsel to provide CERC clients, particularly related to referrals and advice/information on how to self-represent.

- **The service period extension has largely addressed the issue of CERCs not resolving within their initial service period.** Year One results indicated that the CERC service period of 90 days was insufficient time to explore resolution. The 180 day-service period now in effect has largely addressed this issue with administrative data and survey results reflecting fewer requests for extension of the service period. In particular, the administrative data shows about four fifths of CERCs now resolving within the service period and most counsel report that when they request an extension, it is approved. There is still a desire for a longer service period by some counsel due to needing more time for Crown to reassess or seek more information, or the client to complete some aspect of the plea agreement. Counsel who desire an increase in the service period typically wanted it extended to 12 months.

Recommendation: LABC should continue to monitor extension requests to determine whether, as the criminal justice system moves past the pandemic, any further extension to the service period is needed.

- **Most counsel are willing to accept CERCs and support LABC continuing to offer CERCs.** Almost two thirds of counsel surveyed have never declined a CERC and almost nine-tenths of respondents want LABC to continue to offer CERCs. There is, however, desire among many of the counsel who support the CERC for it to be modified. The most common modification suggested was further expanding the service period, improving the information given to clients on the limits of the retainer, making it easier to convert CERCs to standard contracts, and compensating counsel who attempt resolution (even if they cannot resolve) as currently CERCs do not provide sufficient payment under the tariff for the time that they take. Some counsel also mentioned discomfort with the limited scope of the contract.
- **CERCs are less timely on an LABC performance measure than standard adult criminal contracts.** The time between the intake interview date and the date of contract issuance is longer for CERCs than for standard adult criminal contracts.

Recommendation: LABC should review its processes to determine why it is taking longer for CERCs to be issued.

- **CERCs cost less than standard adult criminal contracts.** As expected, CERCs had a lower cost than standard adult criminal contracts. This was the case overall and for cases involving the six most common offences that are covered by CERCs, although the amount of difference varied by type of offence.
- **Awareness of the CERC among other justice stakeholders and understanding of the CERC could be improved.** Many of the other justice stakeholders interviewed were not aware of the CERC and mentioned that others in their position could better connect self-represented accused with legal aid if they knew of this type of contract. There were also issues noted with clients and other justice stakeholders not understanding the limits of the retainer. This points to the potential need for more outreach regarding the CERC and better materials for clients to clarify the nature of this contract.

Recommendation: LABC should conduct more outreach related to the CERC with Crown and sheriff services to build awareness.

Recommendation: LABC should review its communications with clients who receive CERCs to better support counsel in explaining the limited nature of the retainer to clients.

Outcomes

The evaluation found that the CERC is generally achieving its intended outcomes. However, these findings were impacted by the pandemic and the inability to rely on court data to show potential impacts of the CERC, particularly on earlier resolution and more efficient use of court.

- **CERCs are contributing to access to justice.** The evaluation findings support the CERCs' contribution to access to justice. Most CERCs are given to individuals who would not otherwise have been eligible for legal aid. Most counsel believe that CERCs have had a moderate or substantial impact on improving access to justice for individuals who would not otherwise receive legal aid. In addition, key informants (particularly judges and Crown) believe that the CERC has contributed to access to justice by providing legal representation to individuals who would not have received assistance (or as much assistance) previously. Both counsel survey respondents and other justice stakeholder key informants believe that the CERC has contributed to a reduction in self-represented accused. The outcomes on CERCs also reflect the nature of the types of cases — while most cases still resolve with a guilty plea, there are more cases that have other outcomes (e.g., stays, peace bonds, alternative measures) than standard adult criminal contracts.
- **CERCs are contributing to earlier resolution.** Compared to standard adult criminal contracts, completed CERCs were resolved on average in 88 days compared to 104 for standard adult criminal contracts. The majority of counsel also believe that CERCs have had a moderate to substantial impact on facilitating early resolution. Key informants concur and believe CERCs facilitate earlier resolution as communications between Crown and defence counsel can occur earlier in the process, particularly when compared to the situation with self-represented accused persons.
- **CERCs are contributing to the efficient use of the court process.** The evaluation evidence for CERC's contribution to greater efficiency for the court process was positive but less strong than for the other outcomes. CERCs were considered to support the needs of the criminal justice system during the COVID-19 pandemic as the situation would have been even more challenging for self-represented accused persons. Providing counsel for CERC clients was also thought to remove the ethical challenges for the Crown in negotiating an early settlement with self-represented accused persons as well as generally address the complicated situations that judges, Crown, and sheriff services encounter when someone is not represented. The CERCs' ability to reduce the number of court appearances and otherwise impact the efficiency of the court process was viewed as less substantial by counsel compared to the other outcomes (access to justice and earlier resolution). Key informants were more likely to see the CERCs as contributing to the efficiency of the court system because of their focus on the impact of having counsel and the difference that it makes to the operations of the criminal justice system.

- **LABC could also consider improving its data collection processes in order to better assess the implementation and impact of CERCs.**

Recommendations: LABC should consider improvements to the data collected as it relates to the CERCs (and potentially standard adult criminal contracts as well). In particular:

- collect some relevant data by criminal information to enable a better understanding of outcomes, resolution rates, why some contracts do not resolve, and why some CERCs are converted to standard criminal contracts;
- use one variable to capture whether CERCs have been converted to standard contracts so that they do not have the potential to be undercounted;
- add a variable to collect when contracts are closed (with or without resolution);
- have counsel provide the actual date of resolution of a contract/information as part of their final invoice; and
- ensure that fields related to financial and substantive eligibility have information that enables an analysis of the impacts of expanded eligibility without the current caveats that are noted in this report.

1.0 Introduction

Legal Aid BC (LABC) hired PRA to conduct an evaluation of its Criminal Early Resolution Contract (CERC). The evaluation covered approximately two years from the launch of the CERC (May 15, 2019) to May 31, 2021. A report for the first year of the evaluation focussed on the time period from May 15, 2019 to December 31, 2019 and provided information on early implementation of the CERC based on two lines of evidence (an administrative data review and counsel survey) (the Year One report). The report can be found on the LABC website at https://legalaid.bc.ca/sites/default/files/2020-08/CERCevaluation_YearOne.pdf.

This final evaluation report builds on the earlier report and includes information on outcomes using additional lines of evidence and a pre/post comparison of selected court locations.

2.0 Overview of the Criminal Early Resolution Contract

LABC introduced the CERC on May 15, 2019, as a method to expand its criminal legal aid services to clients who do not qualify for a full representation contract (LSS, 2019a). The CERC builds on the pilot Expanded Criminal Duty Counsel (EXP CDC) project implemented in Port Coquitlam, which produced positive results (PRA, 2017). CERCs are available in all Provincial Court locations and are intended to augment, not replace, out-of-custody duty counsel services.

The concept for the CERC is to provide low-income clients who are not otherwise eligible for full representation under LABC eligibility guidelines with the opportunity to have their case reviewed by a lawyer early in the remand process to determine if a resolution with the Crown might be reached and avoid using limited public resources on unnecessary criminal trials (PRA, 2017). Currently, LABC denies full representation legal services to approximately 1,200 criminal legal aid applicants annually—either because they exceed the financial eligibility threshold or because their case does not carry a penalty involving jail time (LSS, 2019c). The CERC provides non-trial resolution services to clients whose monthly income exceeds the full coverage financial threshold¹ by up to \$1,000. Also, clients are eligible for assistance even if their case would not result in jail time upon conviction (LSS, 2019a).

Under the CERC, counsel meet with clients early in the process to review the details of the case and to provide summary advice on options. If the client wants to explore resolution, counsel can negotiate potential dispositions with the Crown and, if a plea is reached, can also appear in court to speak on disposition. If the client is not interested in resolving the matter without a trial, counsel can provide summary advice on their options related to self-representation or legal representation. CERC contracts cover all tariff items covered in standard full representation contracts, except for preliminary hearing, pre-trial conference, and trial fees. The contracts cover all disbursement items and applicable travel authorizations. Contracts are required to be billed within 60 days of the end of service (LSS, 2019b).

Initially, CERC services were limited to a 90-day period (although contracts could be extended through an application process if a longer time period was required) (LSS, 2019a). Based on feedback from Year One that the 90-day service period was not sufficient time for most contracts to successfully resolve, as of April 2020, LABC extended the service period to 180 days (LABC, 2020).

¹ The current threshold for standard coverage begins at a monthly income of \$1,660 and increases based on household size up to \$5,640 for a household of seven or more (LSS, 2020).

The anticipated benefits of the CERC included (LSS, 2019c):

- allowing a wider range of individuals to access legal services which they could not previously access;
- allowing lawyers who do legal aid to help more clients who would otherwise have had to represent themselves; and
- reducing the use of court system resources on unnecessary court appearances through earlier resolution of more cases.

While not one of its original anticipated benefits, LABC considered the CERC to be a tool that could assist with managing the COVID-19 pandemic impacts on the criminal justice system. To respond to the COVID-19 pandemic, courts moved to virtual hearing rooms and steps were taken to reduce the number of times that individuals appeared before the court. As a mechanism to provide counsel to individuals early in the process who might not otherwise have been represented, the CERC's anticipated benefits of reducing unnecessary court appearances and supporting earlier resolutions were particularly important during the pandemic.

3.0 Methodology

The evaluation is guided by the evaluation matrix, which is included in Appendix A. The original methodology was to include an analysis of pre/post CERC using LABC data and Provincial Court data based on two court locations. The COVID-19 pandemic, in particular, impacted this methodology, as is described further in Sections 3.3 and 3.4.

As a result, the methodology is based primarily on three main lines of evidence:

- online surveys of counsel (counsel who have recently invoiced for a CERC and all counsel who have done work for LABC in a recent 12-month period)
- LABC data for adult criminal applications, CERCs, and adult criminal standard contracts
- case studies (primarily information from key informant interviews)

3.1 Online surveys of counsel

The survey task was updated based on the Year One evaluation experience. In Year One, the survey questionnaire included questions specific to a recently completed CERC and general questions regarding their opinion of the CERC. This approach meant that counsel were provided the general questions multiple times. To avoid this, two counsel surveys were conducted:

1. The counsel who have recently invoiced for a CERC were asked to respond to an online survey to gather information about their handling of and experience with that specific CERC.
2. All counsel who have received a standard contract or a CERC contract in the preceding 12 months were asked their opinions about the CERC as a new approach to providing criminal legal aid services.

The survey questionnaires were designed in consultation with LABC and are included in Appendix B.

Survey 1: Counsel who had invoiced for a CERC

Counsel who had a CERC were asked to respond to an online survey to gather information about their experiences providing services under a CERC.

The survey process was triggered when counsel submitted their invoice for services under a CERC. Once the triggering event occurred, the LABC system would send counsel an email that introduced the survey, requested their participation, and provided information regarding the CERC invoice that they were to consider when completing the survey. The email also included a link to the online survey with a unique PIN. By clicking on the link, counsel were directed to the survey located on PRA's servers.

To encourage responses, the survey was relatively short (i.e., required less than five minutes to complete), and PRA provided up to two follow-up emails to counsel who had not completed the survey.

The survey was open from December 4, 2019 until May 1, 2020 for Year One reporting and between January 28, 2021 and July 2, 2021 for the final evaluation report. The sample sizes and response rates are shown in Table 1.

Year	Completed	Sample	Response rate
Year One	173	667	26%
Year Two	385	1,412	27%
Total	558	2,079	27%

Note: Emails that were undeliverable were removed from the sample (n=23 in Year One and n=32 in Year Two). A correction was made to the sample size for Year 1.

Survey 2: All counsel who have provided criminal legal aid (standard or CERC)

This online survey was provided to all counsel who had a standard contract or a CERC in the 12 months prior to the survey launch. A total of 572 counsel received an invitation for the survey from LABC.² The survey was in field from September 8, 2021 to October 7, 2021. To encourage responses, three reminder emails were sent. The survey included general questions about counsel's experience (if any) with the CERC and sought their opinion of the CERC, its effect on the criminal justice system, and client outcomes.

A total of 148 counsel responded to the survey for a response rate of 26%. Most counsel who responded had provided more than one type of criminal legal aid service, and 78% had provided legal aid services under a CERC. See Table 2.

	# of respondents	% of respondents
Standard adult criminal contract*	145	98%
Criminal Early Resolution Contract	115	78%
Duty counsel	85	57%
Total	148	100%

Note: Respondents could provide more than one answer; totals may sum to more than 100%.
*In the survey questionnaire, the terminology used for standard adult criminal contract was *client-based standard contract*, as that was thought to reflect how counsel refer to these contracts.

² Seven emails were undeliverable and are removed from the total sample size of 579.

3.2 Document and LABC data review

Document review

PRA reviewed documents related to the CERC primarily taken from the LABC website.

Review of LABC data

LABC provided PRA with data from its Client Information System (CIS) that responded to the evaluation questions. The data included adult criminal applications with interview dates between the time period of May 15, 2019 (CERC launch) and May 31, 2021, decisions on those applications, and data for contracts related to those applications. Activity on the applications and contracts were included up to the date the data were generated, which was October 15, 2021.³

The 138-day period between the last CERC date included in the analysis (May 31, 2021) and the date on which the data were generated (October 15, 2021) was to provide as much time as possible for CERCs issued closer to the end of the period to be concluded and, correspondingly, to enable the evaluation to include as much data on the issued CERCs as possible.

The data analyzed did not include:

- youth cases, court-ordered cases, and cases without a standard adult criminal contract for full representation or a CERC because they are not subject to normal eligibility and coverage rules; and
- large criminal cases (managed through the Criminal Case Management program in consultation with defence counsel), as their length and costs are outliers.

Pre/post CERC comparison

For a few outcome measures, the evaluation considered the impact of the CERC by looking at LABC CIS data pre/post the launch of the CERC. Due to the COVID-19 pandemic, the decision was made to look at a subset of the LABC data that did not include the early period of the pandemic, which would have been most likely to impact legal aid applications. As a result, for a few measures, the evaluation compared two time periods to enable some early comparisons between the pre-CERC and CERC periods:

- October 1, 2017 to May 31, 2018 (pre-CERC)
- October 1, 2020 to May 31, 2021 (post-CERC)

³ CIS data is continually updated and could be different if generated on a different date.

3.3 Case studies

The case study locations selected are the comparison site locations used for the Expanded Criminal Duty Counsel (EXP CDC) evaluation (Abbotsford and Kelowna). This line of evidence was most impacted by events outside of the evaluation. Initially, the evaluation was going to compare the CERC results to the EXP CDC model in Port Coquitlam but, as the EXP CDC model ceased operations, that comparison was not done. In addition, the COVID-19 pandemic impacted this line of evidence. Provincial Court operations experienced some disruption from the pandemic, and the pandemic has had broader societal impacts on crime rates, for example, that will likely not be fully understood for years. Because the CERC is a province-wide initiative, separating pandemic impacts from CERC impacts is not possible.

As a result, the case studies involve less information than originally anticipated, particularly with respect to the court data, as is described in more detail below in Section 3.4 and Appendix E.

Key informant interviews

A total of nine key informants were interviewed across the two case study locations. In total, there were five key informants from Abbotsford and four from Kelowna. Interviews were conducted by telephone using the interview guide in Appendix C.

Judges	4
Crown	3
Sheriff services	2
Total	9

LABC data

This analysis was to be done in order to conduct the comparison of the CERC with the EXP CDC model, which is no longer part of the evaluation. Therefore, LABC data by case study location was not analyzed.

Court data

The court data analysis used a pre/post method to compare data for two time periods for the two court locations (Abbotsford and Kelowna). The court data included all **new** adult criminal cases—that is, cases with a substantive initiating criminal court document (information) sworn against an accused person in provincial adult criminal court⁴ and with a first appearance date between the following:

- October 1, 2017 and May 31, 2018 (pre-CERC)
- October 1, 2020 and May 31, 2021 (post-CERC)

Only new adult criminal cases that were comparable to the type of cases that would be handled under a CERC were included in the analysis. LABC compiled a list of common criminal charges handled under CERCs, which was provided to Strategic Information and Business Applications of the Court Services

⁴ A new criminal court case refers to a substantive initiating criminal court document (information) sworn against an accused person in provincial adult criminal court. This does not (generally) include subsequent documents, such as re-laid informations and applications. New cases are extracted based on the file's first appearance date (not sworn date) being within the select time periods.

Evaluation of the Criminal Early Resolution Contract – March 24, 2022

Branch (CSB). CSB extracted the data and provided PRA with the results for the measures of interest to the evaluation.

The evaluation had to use a shorter time period than is ideal for the pre/post comparison in order to avoid months when LABC and court processes were substantially affected by the COVID-19 pandemic. October 1, 2020 to May 31, 2021 was chosen for the post period to move beyond the early pandemic impacts; however, the pandemic has continued well beyond those dates. As the tables below show, the number of comparable new adult criminal cases between the two time periods has dropped substantially, and the proportion of new cases resolved during the eight-month periods is lower in the post period.⁵ The proportion of new cases that resolved post bail hearing increased, which could be due to the criminal justice system's response to the pandemic. However, this is difficult to determine, as court locations managed their pandemic responses in different ways. This illustrates the challenges in being able to interpret the court data.

Table 4: Number of new comparable adult criminal cases in Kelowna and Abbotsford - pre/post CERC

Court location	Oct 1, 2017 - May 31, 2018 (Pre-CERC)	Oct 1, 2020 - May 31, 2021 (Post-CERC)	% change
Abbotsford	1,058	634	-40%
Kelowna	1,265	598	-53%

Note: New cases are defined as cases with a substantive initiating criminal court document (information) sworn against an accused person in provincial adult criminal court with a first appearance date within the period specified. They do not include subsequent documents, such as re-laid informations. Data only includes the types of matters handled by the CERC by the most serious offence, as provided by LABC.

Data also excludes all cases where there was a bail hearing with an outcome of a detention order and where the substantive outcome code is "NR" - Not Released. Bail appearances include appearance reasons of "JIR" (Judicial Interim Release), "ARB" (Application to Revoke Bail), and "AVB" (Application to Vary Bail).

Table 5: New comparable adult criminal cases resolved in Kelowna and Abbotsford - pre/post CERC

Court location	Oct 1, 2017 - May 31, 2018 (Pre-CERC)				Oct 1, 2020 - May 31, 2021 (Post-CERC)			
	Concluded		<i>Of resolved cases</i>		Concluded		<i>Of resolved cases</i>	
			Concluded at bail hearing	Concluded post bail hearing			Concluded at bail hearing	Concluded post bail hearing
	#	%	%	%	#	%	%	%
Abbotsford	485	46%	48%	52%	212	33%	23%	77%
Kelowna	650	51%	37%	63%	185	31%	22%	78%

Note: Concluded criminal court cases indicate the number of provincial adult criminal cases with a final disposition recorded against all of the charges on an information or ticket. Cases that are on outstanding bench warrants are not counted as concluded cases.

The short time horizon available for the comparison and the ongoing pandemic impacts mean that the effects of the pandemic and the CERC on the criminal court system cannot be disaggregated.

⁵ Post-bail hearings would be the type of cases handled under the CERC.

3.4 Challenges and mitigating steps

The table below provides a brief overview of the challenges that the evaluation experienced, along with steps taken to mitigate them.

Challenges	Mitigating steps
The LABC administrative data, as is true with most administrative data, is mainly collected for operational rather than evaluation purposes, so some desired fields do not exist or data is collected in a different format than needed for the evaluation.	Where possible for items not specifically tracked in the CIS, variables were constructed from the available data or certain assumptions were used in analyzing data. Table notes are included that detail how the data were used and interpreted. In addition, cautions are included in the report as appropriate.
LABC administrative data did not support analysis for some indicators in the evaluation matrix. For example, the reasons for extensions are not systematically tracked.	To mitigate this challenge, the survey of counsel sought this type of information. For example, counsel who requested extensions were asked about the reasons for making the request.
A limitation to the analysis in Year One was the relatively short time horizon for the LABC CIS data. For the final evaluation report, this challenge was less of an issue, even though the service period is now 180 days.	LABC CIS data were used for contracts issued between May 15, 2019 to May 31, 2021 (12.5 months), and the costs and outcomes entered into CIS as of October 15, 2021 (when the data were extracted) were used, which is an observation period of five to 29 months post contract issuance. This means that most post-April 2020 contracts will have experienced the full six-month contract period, although not all.
As noted above, the time period for the court data has a very short time horizon. At most, cases had five months to resolve. The evaluation was limited in the available timelines due to the COVID-19 pandemic and the three-month stabilization period for the court data.	The evaluation used a time period that did not begin until October 2020 to try to avoid the largest pandemic impacts on the criminal justice system. However, the data demonstrate that the volumes of new court cases for the October 2020 to May 2021 period are still down substantially from the earlier, pre-pandemic eight-month period.
The COVID-19 pandemic also affected the pre/post comparison for the court data. This type of analysis is predicated on the intervention being studied (the CERC) being the primary difference between the pre/post periods that would impact the variables of interest. However, the pandemic also likely impacted those variables (e.g., number of appearances, number of trials). As a result, the impacts of the CERC could not be separated from the impacts of the pandemic.	No mitigation steps are available to adequately respond to this issue. For this reason, the court data is not heavily used in this report and no conclusions are drawn based on the court data.

A note on terminology used:

Some analyses, such as the cost of CERCs and the rate of success in resolving cases, depended on considering closed or concluded CERCs. LABC administrative data does not record when a contract has concluded in a single field. There is a *contract closed reason* field that is used in certain situations (e.g., a contract was issued in error, there was a change of counsel), an *outcomes* field, a *service stop date*, and a *result date*. For this report, the *outcomes* field was used to determine if the contract was closed or completed, as the *service stop date* and *result date* are system-generated. Only once a lawyer has

submitted an invoice will the outcome and cost of the contract be known. Therefore, the following definitions are used in this report:

- A **closed CERC** is defined as one that concluded with or without a resolution on the charges.
- A **completed CERC** is defined as one that concluded with a resolution on the charges or concluded without a resolution but was not continuing as a CERC.

Further detail of how LABC administrative data were used to create the variables of closed or completed contracts are found in the table notes.

4.0 Findings

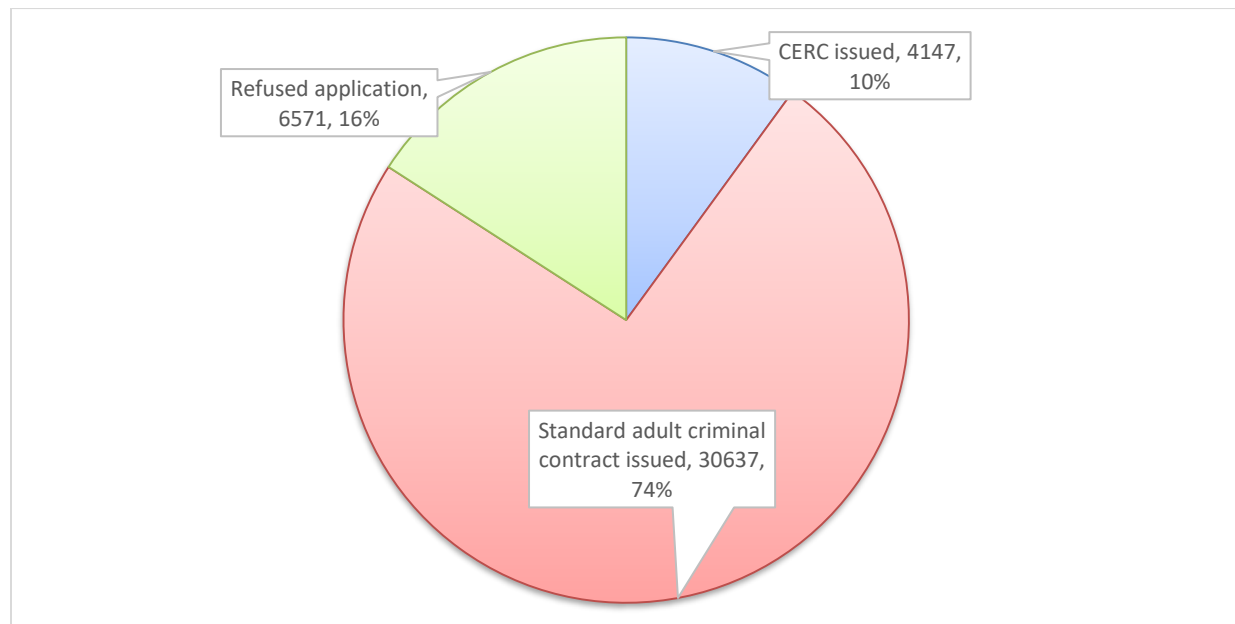
The remainder of the report presents the findings of the evaluation and is organized based on the evaluation matrix.

4.1 Implementation

Use of the CERC

Between the launch of the CERC on May 15, 2019 and May 31, 2021, CERC contracts were issued in 10% of adult criminal applications received by LABC. This was slightly higher than the Year One results (7% of applications had CERCs issued).

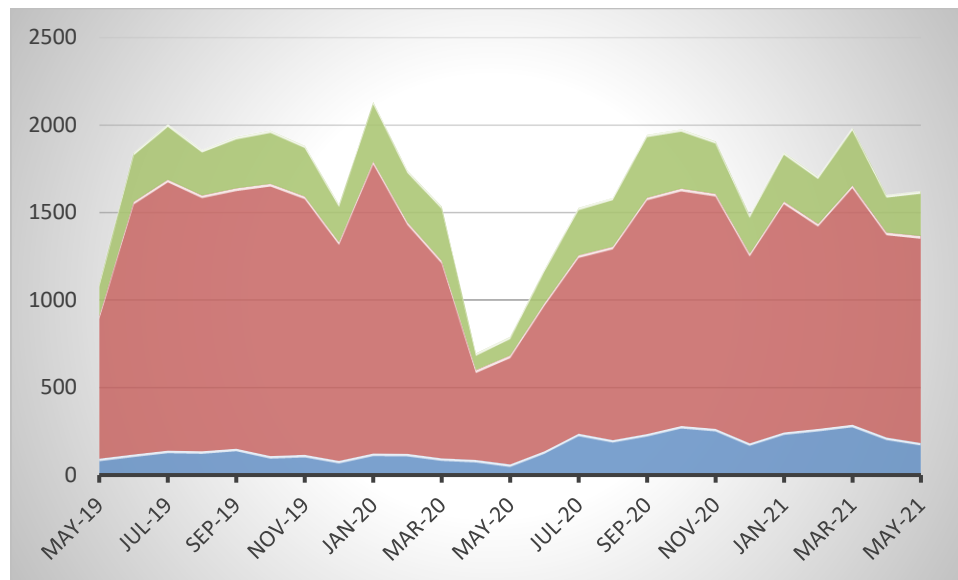
Figure 1: Decisions on adult criminal legal aid applications made from May 15, 2019 to May 31, 2021 (LABC CIS data)



When considering the decisions on applications over time, the impact of the COVID-19 pandemic on the total number of applications and the lower rates of refusal is evident, as shown in Figure 2. While the pandemic impact is clear in the marked dip in applications from March to May 2020, starting in June 2020 the number of applications begins to rebound. Of particular note in Figure 2 is the increase in the number of CERCs issued during the June 2020 to May 2021 time period. The number of CERCs issued went from a monthly low of 61 in May 2020 to averaging 227 CERCs issued per month for the ensuing 12

months (June 2020 to May 2021). The number of CERCs issued per month as a percentage of all adult criminal applications ranged from 2-3% pre-pandemic to 4-6% post-pandemic. These results reflect the increased expansion of CERCs by LABC to better respond to the needs of the criminal justice system during the pandemic. As a service that is not court-based, CERCs provided an alternative when public health priorities required reduced personal attendance at courthouses.

Figure 2: Decisions on applications by month, May 15, 2019 to May 31, 2021 (LABC CIS data)



The potential impact of the creation of the CERCs on lowering the percentage of applications refused coverage is also seen when comparing LABC data pre/post the CERC. As discussed in Section 3.2, the evaluation compared two time periods chosen to reduce the beginning of the pandemic’s impact on the data and to reflect potentially more enduring trends. While there could be many contributing factors, the expansion of coverage due to the creation of the CERC could be a contributing factor for the decrease in refused adult criminal applications by just over one quarter (26%).

Result of adult criminal application	Oct 2017 - May 2018	% of total	Oct 2020 - May 2021	% of total	Change 2017/18 to 2020/21	% change
CERC issued	4*	<1%	1,918	14%	N/A	N/A
Standard adult criminal contract issued	11,653	80%	10,000	71%	-1,653	-14%
Refused application	2,988	20%	2,199	16%	-789	-26%
Total adult criminal applications	14,645	100%	14,117	100%	-528	-4%

Note: Totals may not sum to 100% due to rounding.
 Adult criminal applications can have multiple contracts issued, so if any one contract was a CERC, the application is counted in the CERC category. Refused adult criminal applications do not specify a type of contract. The interview date was used as the application date.
 *Four CERCs were issued in 2020/21 for applications made in the 2017/18 period (based on the interview date).

Client profile

CERC clients are generally similar to clients who are receiving services under a standard adult criminal contract, although there are a few noteworthy differences.

- CERC clients were 28% female, which is a higher proportion of female clients than those who are receiving standard adult criminal contracts (20% female).
- Most CERC clients were under the age of 40. The distribution of clients by age is similar among issued contract types and refused adult criminal applications.
- Just over one quarter self-identified as Indigenous (26% of CERC clients and 29% of clients for standard adult criminal contracts).
- The proportion of CERC clients who were not born in Canada is similar to clients for standard adult criminal contracts (5% and 4%, respectively).
- The proportion of clients with identified disability needs is higher among standard adult criminal contracts than for CERCs. Conversely, this means that there is a higher proportion (89%) of clients with no identified disability who received a CERC than who received a standard adult criminal contract (77%).

A table with the demographic data is in Appendix D.

Offences covered

The types of offences covered provides some indication of the substantive coverage of the CERCs. A key way in which the CERC expands substantive coverage is by covering offences in cases where incarceration is not being sought. This cannot be determined solely from the type of offence but requires an assessment of whether there is a risk of jail time. An analysis of the coverage expansion created by CERCs is in Section 4.2 (Contribution to access to justice).

CERCs covered many of the same offences as standard adult criminal contracts, although they were more concentrated on a few types of offences. Almost one third of CERCs were assault (16%) or driving with a suspended license (14%). For these two offences, CERCs covered one fifth (20%) of the total contracts issued related to assaults (702 out of 3,564) and one third (33%) of the total contracts issued related to driving while suspended (603 out of 1,852).

Two other types of offences had a high proportion covered by CERCs compared to standard adult criminal contracts: over one quarter (29%) of the total contracts issued for spousal assaults (342 out of 1,163) and over one third (35%) of the total contracts issued for impaired driving were CERCs (235 out of 673).

See Table 8 on the next page for details.

Table 8: Most serious offences for CERCs and standard adult criminal contracts - May 15, 2019 to May 31, 2021

Note: Offences that constitute 1% or less of both CERC and standard adult criminal contracts are captured under “other”

Offences	CERC (n=4,314)		Standard adult criminal contract (n=34,536)	
	#	%	#	%
No offence information	4	1%	110	<1%
Assault	702	16%	2,862	8%
<i>Motor Vehicle Act</i> : Driving while suspended	603	14%	1,249	4%
Assault: spousal	342	8%	821	2%
Theft under \$5000	316	7%	3,248	9%
Threats to people	300	7%	2,537	7%
Impaired/.08	235	5%	438	1%
Breach of probation	151	4%	2,839	8%
Mischief and willful damage to property	149	4%	557	2%
Assault causing bodily harm	130	3%	1,572	5%
Assault with a weapon	120	3%	1,689	5%
Other summary offences	131	3%	679	2%
Break and enter: Business or residence - indictable	63	2%	2,551	7%
Fail to comply	75	2%	788	2%
<i>Motor Vehicle Act</i> : Other	83	2%	129	<1%
Other indictable offences	70	2%	1,269	4%
Peace bond offences	91	2%	119	<1%
Sexual assault	65	2%	997	3%
Weapons: Other	86	2%	1,171	3%
Drugs: Possession for the purpose of trafficking	36	1%	963	3%
Fraud: Other	60	1%	575	2%
Possession of stolen property over \$5000	12	<1%	580	2%
Robbery	16	<1%	884	3%
Weapons: Possess restricted weapon or weapon obtained by crime	24	1%	726	2%
Other	452	10%	5,257	15%

Note: Totals may not sum to 100% due to rounding

Type of services provided to CERC clients

The most commonly provided services under the CERC align with the stated CERC objectives and were generally consistent over both years of the survey. Overall, almost all survey respondents stated that they provided summary advice to clients on options (92%) and reviewed disclosure from the Crown (91%). Most respondents reported conducting negotiations with the Crown (89%) and/or attending court to speak to disposition (71%). A number of other advisory services were provided, such as referring clients to non-criminal legal resources (10%).

Table 9: Types of services provided under the CERC (Counsel Survey 1 data)			
<i>What types of services did you provide your client under the Criminal Early Resolution Contract?</i>			
Type of service	Year One (n=173)	Year Two (n=385)	Total (n=558)
Summary advice on options	95%	91%	92%
Review of disclosure from Crown (including police report)	94%	90%	91%
Negotiations with Crown	87%	91%	89%
Court attendance to speak to disposition	73%	70%	71%
Referrals to resources to assist with non-legal issues	24%	20%	21%
Bail variation	14%	13%	13%
Referrals to legal resources to assist with other (non-criminal) legal issues	11%	10%	10%
Advice or information on how to represent self in court*	6%	3%	4%
Referrals to other resources to assist with criminal matter*	11%	3%	3%
Court appearances (but not for disposition)	2%	3%	3%
Meetings, correspondence	1%	1%	1%
Assistance with sentencing/disposition	4%	--	1%
Discussions with client (to attend court, describe what trial is like, what it means to self-represent)	--	1%	1%
File not completed (interim invoice)	--	2%	1%
Legal research	--	1%	>1%
Converted to full certificate and resolved	1%	--	>1%
Written submissions (including Gladue report)	1%	--	>1%
Assistance with probation-related matters	1%	--	>1%
Other	5%	2%	3%
None, client never engaged	--	2%	1%

Note: Respondents could provide more than one answer; totals may sum to more than 100%.
*These options are only relevant if counsel are unable to resolve the matter through the CERC.

As part of the CERC, counsel are expected to provide clients with referrals to other resources when needed. The survey results indicate that referrals are made in a minority of cases. Almost three quarters of respondents (398 of 558, or 71%) did not provide any type of referrals (this increased from 69% in Year One to 72% in Year Two). Most respondents who did not provide referrals indicated that they were not necessary. Possible pandemic impacts are the decline in Year Two of counsel making referrals and the decline of the percentage of counsel who indicated that the client already had access to relevant resources (8% to 2%), which may both be due to services not being as easily accessible. The results overall indicate a possible issue with a low level of community referrals. See Table 10 for details.

Table 10: Reasons referrals were not provided (Counsel Survey 1 data)			
<i>What were the reasons that you did not provide certain types of referrals to other resources?</i>			
Reason	Counsel who did not provide referrals		
	Year One (n=119)	Year Two (n=279)	Total (n=398)
Referrals not warranted under the circumstances	75%	84%	81%
Client did not ask for referrals	36%	36%	36%
Client already had access to relevant resources	8%	2%	4%
Lack of time to provide this type of assistance to client	2%	2%	2%
Unaware of other appropriate resources	1%	2%	2%
Lack of appropriate resources in community	--	2%	2%
Charges weren't approved	--	1%	1%
Client did not want referrals	--	1%	1%
Not connected with client/client didn't engage	--	1%	1%
Other	6%	1%	2%

Note: Respondents could provide more than one answer; totals may sum to more than 100%.

Some respondents were not able to resolve the criminal matters under the CERC (18% or n=104). In this situation, clients presumably still require legal assistance or intend to represent themselves in court. As noted in Table 9, these counsel were asked about whether they provided any additional advice to these clients. Of those respondents who were unable to resolve the criminal matter under the CERC, one fifth (n=20 out of 104) provided advice on how to self-represent in court and approximately one sixth provided referrals to other legal resources (18 of 104 respondents).

Of the respondents who had cases that could not be resolved through the CERC and also did not provide advice to clients on self-representation, the most common reason was that the client already had or was arranging legal representation (33%). In addition, 9% of counsel reported that they had been assigned to represent the client in court or had requested that the CERC be converted to a standard adult criminal contract. The other most common reasons for not providing advice related to self-representation were because the client did not request it (28%) and/or they lacked the capacity to understand this type of advice (14%). See Table 11.

Table 11: Reasons for not advising clients on self-representation (Counsel Survey 1 data)			
<i>What were the reasons you did not provide the client with advice or information on how to represent themselves in court?</i>			
Reason	Counsel who did not advise clients on self-representation		
	Year One (n=30)	Year Two (n=50)	Total (n=80)
Not needed – client had/was arranging legal representation*	47%	24%	33%
Client did not ask for this type of information or advice	20%	32%	28%
Client had cognitive issues that meant they could not comprehend this type of information or advice	20%	10%	14%
Counsel has been assigned to represent client in court / full contract requested	--	14%	9%
Complicated matter / triable issues	--	12%	8%
Ongoing matter, so not relevant yet	--	12%	8%
Lack of time to provide this type of assistance to client	3%	8%	6%
Not needed – client had access to self-help materials	Not asked	8%	6%
Client could not be reached/disappeared	3%	2%	1%
Other	17%	6%	10%

Note: Respondents could provide more than one answer; totals may sum to more than 100%.
 *This response category differed between Year One (client had legal representation) and Year Two (client was arranging legal representation).

Request for extensions by counsel

Year One results indicated that the CERC service period of 90 days was insufficient time to explore resolution. As a result, LABC extended the service period for CERCs to 180 days in April 2020 (LABC, 2020). The results for Year Two demonstrate that the extension of the service period to 180 days has largely addressed this issue, although there is still a desire for a longer service period among about half of counsel surveyed (Counsel Survey 2). This is true, despite the fact that most counsel who request extensions have them approved.

As shown in Table 12, just over four fifths (81%) of completed CERCs⁶ since the 180-day service period took effect did not require an extension compared to 5% in Year One when the service period was 90 days.

⁶ LABC administrative data does not have a field to indicate when a contract is completed, regardless of whether there was a resolution. Consequently, the evaluation created this field for a completed contract based on the following criteria: the contract has an outcome that indicates a resolution and not an interim step (e.g., acquitted, alternative measures, guilty plea) or the CERC is concluded without a resolution (i.e., unresolved – file continuing with a contract stopped date that has passed).

Table 12: Completed CERCs and CERC-converted that received extensions (LABC CIS data)						
	Year One (90-day service period)			Year Two (180-day service period)		
	CERC (n=479)	CERC- converted (n=15)	Total (n=499)	CERC (1,641)*	CERC- converted (n=2)	Total (1,643)
No extension	5%	-	5%	81%	50%	81%
Extension	95%	100%	95%	19%	50%	19%

Note: Percentages may not sum to 100% due to rounding.
LABC administrative data indicate whether there was an extension for the contract, and each contract could have several informations, each of which could receive an extension request.
LABC administrative data does not track extension requests; however, if the difference between contract date and service stop date is more than the applicable service period (90 days or 180 days), an extension was approved.
*Five CERCs had what appeared to be data entry errors (zero or negative service days) and are therefore not included in the statistics reported in this table.

Because the LABC administrative data provide outcomes at the level of the contract, it provides a partial picture of the ability to resolve CERCs within the service period. To get a better indication of the ability of matters to be concluded within the applicable service period, survey respondents were asked to report on resolutions by information.

Survey results also reflect that fewer criminal matters handled under CERCs in Year Two required service period extensions. As Table 13 shows, almost two thirds of informations were resolved within the 180-day service period compared to less than half of informations when the service period was 90 days. Correspondingly, the proportion of informations where counsel requested extensions declined from just over one third to one fifth.

Table 13: Requests for extensions by information (Counsel Survey 1 data)				
<i>Were you able to resolve the criminal matter under the Criminal Early Resolution Contract (by information)?</i>				
	Year One (90-day service period)		Year Two (180-day service period)	
	Number of informations (n=219)		Number of informations (n=560)	
	#	%	#	%
Yes, within service period	96	44%	350	63%
Yes, with extension	77	35%	116	21%
No	43	20%	89	16%
Not completed yet (requesting extension)	3	1%	4	1%

Note: Percentages may not sum to 100% due to rounding.

The proportion of counsel who indicated they requested an extension on one or more informations declined from over one third (38%) in Year One to just over one fifth (21%) in Year Two. These respondents reported extension requests for a variety of reasons that were relatively consistent between the two years. The reasons most often selected were to allow for additional information gathering by the Crown or counsel or to allow for completion of a plea agreement. A possible impact of the increased service period in Year Two, as well as the pandemic, might be seen in the decline in counsel reporting that extensions were required in order for them to obtain or prepare information in support of the client's position (from 42% to 30%). Some reasons directly related to COVID were mentioned in Year Two but not by many counsel (10%).

Table 14: Reasons for requested extensions (Counsel Survey 1 data)

What were the reasons for the requested extension(s)?

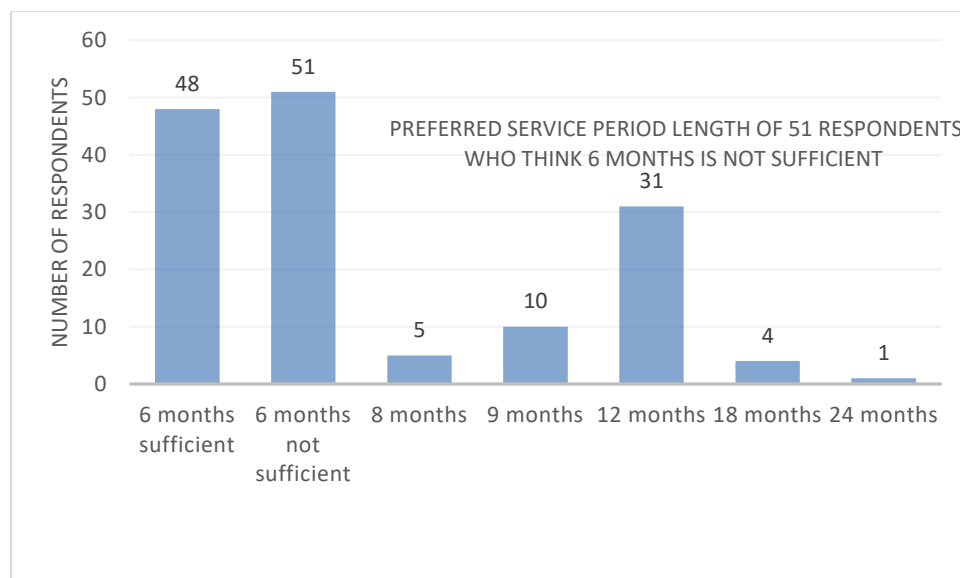
Reason for extension request	Counsel who requested extensions		
	Year One (n=65)	Year Two (n=79)	Total (n=144)
To permit the Crown time to reassess or seek further information	45%	49%	47%
To allow client to complete an aspect of the plea agreement (e.g., community service, counselling)	35%	33%	34%
To prepare/obtain information in support of the client's position	42%	30%	35%
To set for trial (as strategy to get better outcome for client)	--	14%	8%
To accommodate client created delays (failed to appear, had personal issues, needed time to make decision)	11%	10%	10%
COVID-related delay (office closure, trouble contacting client due to COVID)	--	10%	6%
To accommodate Crown and/or co-accused counsel	5%	4%	4%
Court-related delays (not enough court time, judge needed time to make decision)	--	4%	2%
To allow time for medical treatment or assessments for client	--	4%	2%
To allow conversion to full service certificate	5%	3%	4%
To prepare/obtain a Gladue report	3%	3%	3%
Other	12%	6%	9%
Note: Respondents could provide more than one answer; totals may sum to more than 100%.			

When asked about their experience with CERC over the last 12 months, just over a third (36%) of Counsel Survey 2 respondents reported that they had not requested extensions. Most of those who had requested extensions to the service period reported that they were usually approved (82%). See Table 15 for details.

Table 15: Issues experienced in providing CERC services (Counsel Survey 2 data)	
<i>In April 2020, Legal Aid BC extended the service period for Criminal Early Resolution Contracts from 90 days to six months. Thinking of the last 12 months, did you experience any of the following? Indicate the answer that most reflects your experience.</i>	
Issue	Respondents who provided services under a CERC (n=115)
I did not request any extensions to the service period	36%
	Respondents who requested extensions (n=74)
Most of my requested extensions to the service period were approved	82%
Some of my requested extensions to the service period were approved and some were rejected	7%
Few of my requested extensions to the service period were approved and most were rejected	11%

Respondents who had provided services under a CERC were divided on whether the expanded service period was sufficient. Of those who provided an opinion (n=99), 49% indicated that the expanded service period of six months (180 days) was sufficient and 52% desired a longer service period. Of the 51 respondents who desired a longer service period, the preferred length was 12 months, with responses ranging from eight to 24 months. Figure 3 shows these results based on respondents’ opinions of what is/would be the sufficient length for the service period.

Figure 3: Counsel opinion regarding the sufficiency and desired length of the service period (Counsel Survey 2 data)



Conversion to standard adult criminal contracts

In some instances, it is expected that CERCs will require more assistance to resolve than is covered by the CERC (e.g., court appearances beyond speaking to sentencing) and, if they meet the eligibility guidelines, these CERCs will be converted to standard adult criminal contracts, although this should be a minority of CERCs. Based on the LABC administrative data, 4% of CERCs were converted to standard adult criminal contracts. However, this analysis relies on the CIS field contract type for CERCs converting to standard adult criminal contracts, which may undercount the number of conversions.⁷

Table 16: CERCs converted to standard adult criminal contracts - May 15, 2019 to May 31, 2021 (LABC CIS data)		
Type of contract	#	% of total
CERC only	4,151	96%
CERC converted to standard adult criminal contract	163	4%
Total	4,314	100%

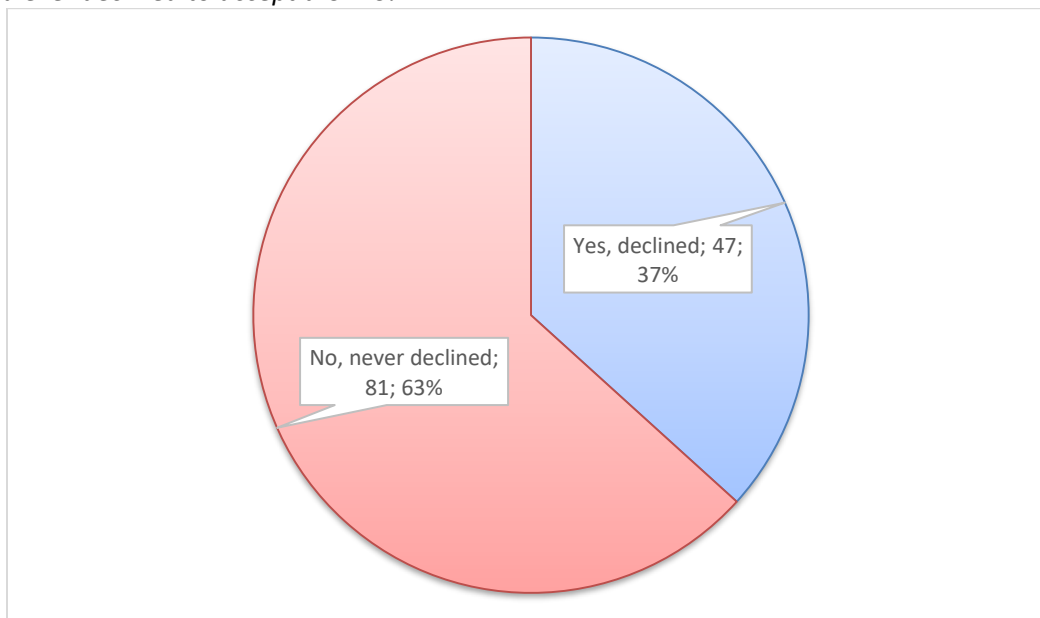
As is noted in the section “Overall level of support for CERCs and suggested improvements,” making the conversion to a standard adult criminal contract easier was one improvement suggested by counsel.

Level of interest in taking CERCs

Based on counsel survey results, most counsel are willing to accept CERCs. In Counsel Survey 2, almost two thirds of counsel reported that they had never declined to accept a CERC.

Figure 4: Acceptance of CERC contracts (Counsel Survey 2) (n=128)

Have you ever declined to accept a CERC?



Note: Twenty respondents could not recall and are excluded from the figure.

⁷ CERCs converted to standard adult criminal contracts may be undercounted in the data. There is a CERC-converted contract type, but a CERC can also be converted by being cancelled and reissued as a standard contract. Therefore, the number of CERCs converted may be undercounted in this report.

For the 47 counsel (37%) who had declined to accept at least one CERC, the most common reasons given were the following:⁸

- lack of comfort with the limited scope of the CERC (n=24)
- CERCs do not provide sufficient payment under the tariff (n=23)
- clients do not sufficiently understand the limited scope of these contracts (n=21)
- CERCs do not provide counsel with sufficient time to do the work (service period) (n=19)
- too busy at the time to take on more work (n=11)⁹

Timeliness of issuing CERCs

An LABC performance measure is the time between the intake interview date and the date of contract issuance, although the CERC is not necessarily expected to shorten that time period. The average amount of time between the intake interview date and the date of contract issuance is longer for CERCs than for standard adult criminal contracts. The median for standard adult criminal contracts is zero, meaning that more than half the contracts were issued on the same day as the interview. To be precise, 64% of standard adult criminal contracts were issued the same day as the interview, while this was the case for 38% of CERCs.

Table 17: Number of days between interview date and contract issue date - May 15, 2019 to May 31, 2021 (LABC CIS data)

Type of contract	# of contracts	Average number of days	Median number of days	Maximum number of days	# of contracts issued on the interview date	% of contracts issued on the interview date
CERC ¹⁰	4,091	14	4	308	1,547	38%
Standard adult criminal contract	30,529	7	0	463	19,163	64%

Note: For service requests with multiple contracts, only the first contract is used. A new interview is not conducted when new contracts are issued.

⁸ Counsel could provide more than one response, so totals sum to more than 100%.

⁹ Counsel could offer reasons other than those listed in the survey questionnaire, and a few did: type of charges not appropriate for CERC / matter too complex (11%, n=5); CERCs reflect preference for guilty plea / limit clients' bargaining power / pressures clients to plead guilty (9%, n=4); CERCs often require substantial time to resolve (4%, n=2); and they had a conflict (4%, n=2).

¹⁰ The results for CERCs include those contracts initially issued as CERCs that were later converted to standard adult criminal contracts. The timelines in Table 17 consider the initial issuance of the CERC.

Change of counsel

The proportion of CERCs with a change of counsel on a contract is a potential measure of efficiency, based on the assumption that the involvement of a second counsel adds time and cost to resolving a matter. As the CERCs are intended to result, if possible, in an early resolution, the expectation is that few CERCs should experience a change in counsel. Table 18 shows that few CERCs (4%) had a change in counsel as compared to standard adult criminal contracts (9%).¹¹ When a change of counsel occurred in a CERC, it was most often initiated by counsel.

Table 18: Changes in counsel – May 15, 2019 to May 31, 2021 (LABC CIS data)

	CERC (n=4,314)	Standard adult criminal contract (n=34,536)
Change of counsel – client initiated	2%	5%
Change of counsel – lawyer initiated	2%	5%
Change of counsel – LABC initiated	<1%	<1%
Change of counsel – court initiated	0%	<1%
No change of counsel indicated	96%	91%
Note: Percentages may not sum to 100% due to rounding. Adult criminal applications can have multiple contracts issued, so the total number of CERCs issued will not align with the number of applications for which CERCs were issued.		

Cost of completed CERC contracts

As expected, CERCs had a lower cost than standard adult criminal contracts. Completed CERCs had an average cost of \$716, which was just over half of the average cost of a completed standard adult criminal contract. The average and median cost for completed converted CERCs was slightly higher than the average for standard adult criminal contracts, reflecting that the client received services under both types of contracts.¹²

Table 19: Cost per completed LABC contract by contract type - May 15, 2019 – May 31, 2021 (LABC CIS data)

Contract type	#	Average cost per contract	Median cost per contract	Maximum contract cost
CERC	2,629	\$716	\$610	\$7,066
CERC converted to adult criminal contracts	106	\$1,567	\$1,076	\$11,598
Standard adult criminal contracts	23,692	\$1,295	\$941	\$29,335
Note: A completed contract is one with an outcome indicating a resolution (e.g., <i>acquitted, alternative measures, guilty plea</i>) or one in which the contract is concluded, but without a resolution (e.g., <i>unresolved – file continuing with a contract stop date that has passed, client proceeding alone</i>). Closed contracts with outcomes of <i>N/A</i> and <i>unresolved – file continuing with a stop date in the future</i> are excluded.				

¹¹ The 9% reflects the overall percentage of standard contracts with change of counsel. The difference from the sum of the percentages in the table is due to rounding.

¹² Tariffs for fees increased by 25% on November 4, 2019, 6% on April 1, 2020, and 2% on April 1, 2021, but because the analysis is not comparing costs over time, the impact of the increase on the average contract cost was not relevant for this report.

Comparing the costs of the six most common offences that are covered by CERCs to standard adult criminal contracts with the same type of offence, the CERCs have substantially lower cost when considering the average cost. The median cost is also substantially less, with the exception of *driving while suspended*, which is almost the same as the standard adult criminal contracts.

Table 20: Cost per completed LABC contract by top six offences covered by CERCs - May 15, 2019 – May 31, 2021 (LABC CIS data)

(Based on most serious offence listed on the contracts)

Offence	Cost per CERC*				Cost per standard adult criminal contract			
	#	Average	Median	Maximum	#	Average	Median	Maximum
Assault	673	\$448	\$467	\$4,084	2,883	\$742	\$612	\$12,416
Driving while suspended	594	\$389	\$486	\$2,621	1,251	\$410	\$480	\$3,545
Assault: spousal	330	\$452	\$467	\$2,172	827	\$603	\$583	\$4,953
Theft under \$5000	313	\$480	\$467	\$3,396	3,256	\$746	\$660	\$5,011
Threats to people	290	\$635	\$690	\$2,524	2,556	\$1,028	\$899	\$9,689
Impaired/.08	230	\$678	\$801	\$2,046	439	\$872	\$824	\$9,841

Note: A completed contract is one with an outcome indicating a resolution (e.g., *acquitted*, *alternative measures*, *guilty plea*) or one in which the contract is concluded, but without a resolution (e.g., *unresolved – file continuing* with a contract stop date that has passed, *client proceeding alone*). Closed contracts with outcomes of *N/A* and *unresolved – file continuing* with a stop date in the future are excluded.

* CERCs converted to standard adult criminal contract are not included.

Awareness of the CERC

General awareness of other stakeholders

Based on case study interviews, there was a lack of awareness of the CERC by all key informant categories. For judges, this was not considered to be an issue, as they should not know who is represented by legal aid. For sheriffs and Crown, it was thought that greater awareness of the CERC might be useful. In particular, sheriffs encounter self-represented accused and could let them know about the CERC. For Crown, the level of awareness of the CERC was more mixed, with some having greater awareness than others who had not heard of the CERC. Also for Crown, awareness of the CERC was thought to be useful, as Crown's understanding of the limited retainer could benefit the process.

Understanding limits of the retainer

More than half of counsel experienced some type of issue with the CERC, primarily related to either the client, Crown, or the court not understanding the limits of their retainer. In Year One, this question was asked of counsel who submitted invoices (Counsel Survey 1), so the responses are not strictly comparable to Year Two. However, it is interesting to note that, on a contract-by-contract basis (as opposed to all CERCs over a 12-month period), 83% of counsel responding to the Year One survey did not report any issues listed in Table 21. The Year Two survey results in Table 21 show that 40% of counsel had not experienced any of the listed issues. This could point to a need for additional reminders to clients, Crown, and the court about the limits of representation under the CERC as opposed to standard adult criminal contracts.

Table 21: Issues experienced in providing CERC services (Counsel Survey 2 data)
 Did you experience any of the issues below with the Criminal Early Resolution Contract that you had in the last 12 months?

Issue	Total respondents (n=115)
No issues noted	40%
Client did not understand limits of your retainer	49%
Crown did not understand limits of your retainer	28%
Court did not understand limits of your retainer	20%
Difficulty getting off the record	17%
Don't recall	4%

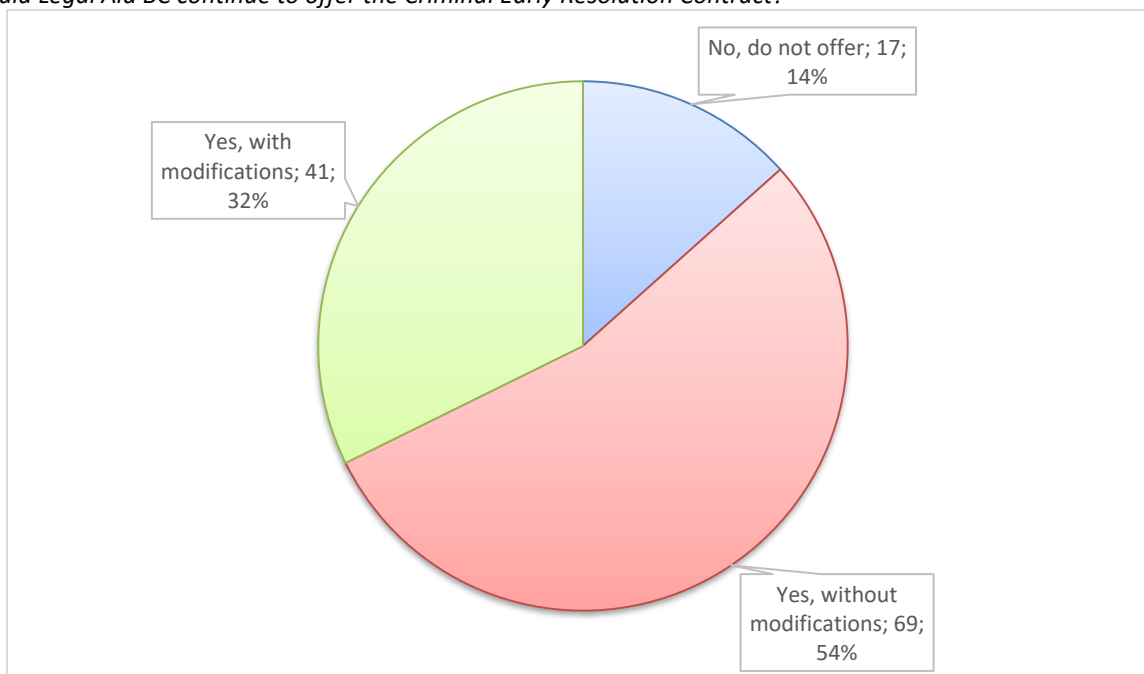
Note: Respondents could provide more than one answer. Individual values may sum to more than total.

Overall level of support for CERCs and suggested improvements

Lawyer survey results indicate substantial support for the CERCs with almost nine-tenths of respondents (87%) wanting LABC to continue to offer CERCs. There is, however, desire among many of the counsel who support the CERC for it to be modified (n=41 of the 110 counsel who want LABC to continue offering the CERC).

Figure 5: Counsel support for the CERC (Counsel Survey 2 data) (n=127)

Should Legal Aid BC continue to offer the Criminal Early Resolution Contract?



Note: Twenty-one respondents did not offer an opinion and are not included in Figure 5.

Of the 17 counsel who believe that LABC should no longer offer the CERC, the most cited reasons were that the contract inappropriately encourages guilty pleas (n=5) and has inadequate compensation (n=5).

Some counsel¹³ offered suggestions for improving the CERC with the most common suggestions including:

- extend the service period (14%, n=18)
- improve the information given clients on the limits of the retainer (8%, n=10)
- make it easier to convert CERCs to standard criminal contracts (if counsel thinks that trial is appropriate) (8%, n=10)
- compensate counsel who attempt resolution (even if cannot resolve) or require multiple court appearances (5%, n=6)

Key informants from the case studies were unanimously supportive of the CERC and wanted it to continue for reasons that will be considered in more detail in Section 4.2. Primarily, they noted that when accused persons have counsel, cases proceed more smoothly, and the accused person receives legal advice and assistance which could lead to a better outcome for them. They did not provide any suggestions for improvement other than expanding the CERC so that more individuals would be covered, although they pointed out that they could not speak to the cost implications for LABC of maintaining the CERC.

4.2 Outcomes

This section focusses on the three identified outcomes for the CERC: its contribution to access to justice, earlier resolution, and efficiency of the court process.

Contribution to access to justice

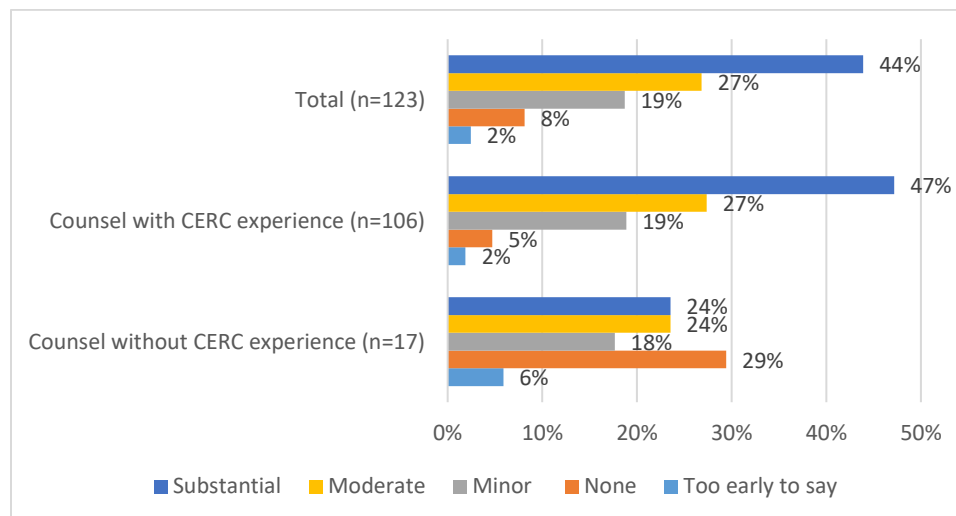
Overall assessment of contribution to access to justice

The evaluation findings support that CERCs contribute to access to justice. Close to three quarters of counsel survey respondents (71% of all respondents and 74% of counsel with CERC experience) believe that CERCs have had a moderate or substantial impact on improving access to justice for individuals who would not otherwise receive legal aid. In addition, key informants (particularly judges and Crown) believe that the CERC has contributed to access to justice by providing legal representation to individuals who would not have received assistance (or as much assistance) previously. According to the key informants, having counsel's assistance is seen to improve the accused person's understanding of the legal system, the charges against them, possible sentences, and their options. Legal representation also assists the person with identifying whether they have a defence and communicating/negotiating with the Crown.

¹³ Only counsel who supported the continuation of CERCs or did not offer an opinion were asked to provide suggestions for improvement.

Figure 6: CERC impact on improving access to justice (Counsel Survey 2 data)

How would you describe the impact that the Criminal Early Resolution Contract had on improving access to justice for individuals who would not otherwise receive legal aid?



Note: Respondents who could not provide an opinion are not included in the results (8%, n=9 of 115 counsel with CERC experience and 50%, n=16 of 33 counsel without CERC experience).

Expansion of legal aid eligibility

Confirming the early findings in the Year One report, CERCs contribute to access to justice by expanding financial eligibility and coverage to individuals who are not facing incarceration upon conviction. As Table 22 shows, most applicants receiving CERCs were ineligible for a standard adult criminal contract on either one or both of those grounds. Four fifths (80%) of individuals receiving a CERC would not have received a standard adult criminal contract. However, the CIS data may not reflect changing circumstances that impact a client's financial and coverage eligibility.¹⁴ This likely accounts for the proportion of CERCs for which the available data on eligibility indicates that they were eligible for a standard adult criminal contract.

¹⁴ LABC administrative data has limitations for determining whether the applicants met eligibility requirements. Financial eligibility assessments are not always completed before contracts are issued, so financial eligibility data are incomplete. Substantive eligibility (risk of incarceration for standard adult criminal contracts) is noted in a field titled *risks noted on service requests*. However, the risks may change and the decision on the application may be based on risks not noted in CIS. Therefore, these results on eligibility must be treated with caution.

Table 22: LABC adult criminal applicants ineligible for a standard adult criminal contract who were issued a CERC (LABC CIS data)

Eligibility for a standard adult criminal contract	CERC issued (n=4,147)	
	#	%
Eligible financially	3,459	84%
Not eligible financially	680	16%
No financial information available	8	<1%
Meets coverage guidelines	1,019	25%
Does not meet coverage guidelines	3,128	75%
Eligible for legal aid representation contract (financial and coverage)	805	19%
Ineligible for legal aid representation contract	3,334	80%
No financial information available	8	<1%

Note: Percentages may not sum to 100% due to rounding.

Please see caution in footnote 14 related to this table.

An applicant could be ineligible for a standard adult criminal contract based on one or both of the financial and substantive reasons.

The proportion of refused applications and the reasons for refusal also indicate that CERCs are having the desired impact. When comparing the reasons for refusing legal aid applications pre/post CERCs, both the percentage of refused applications declined overall and the reasons for refusing coverage also shifted with more applications being refused because they were abandoned and a smaller percentage being refused due to coverage and/or financial ineligibility.

Table 23: Comparison pre/post CERC for refusals¹⁵ (LABC CIS data)

	Pre-CERC (October 1, 2017 to May 31, 2018)	Post-CERC (October 1, 2020 to May 31, 2021)
	Total applications (n=14,645)	Total applications (n=14,117)
Refused applications out of total applications	20%	16%
Reasons for refusal	Refused applications (n=2,988)	Refused applications (n=2,199)
Refused: Abandoned	63%	81%
Refused: Coverage and financial	6%	1%
Refused: Financially ineligible	14%	15%
Refused: Coverage	18%	2%

Note: Totals may not sum to 100% due to rounding.

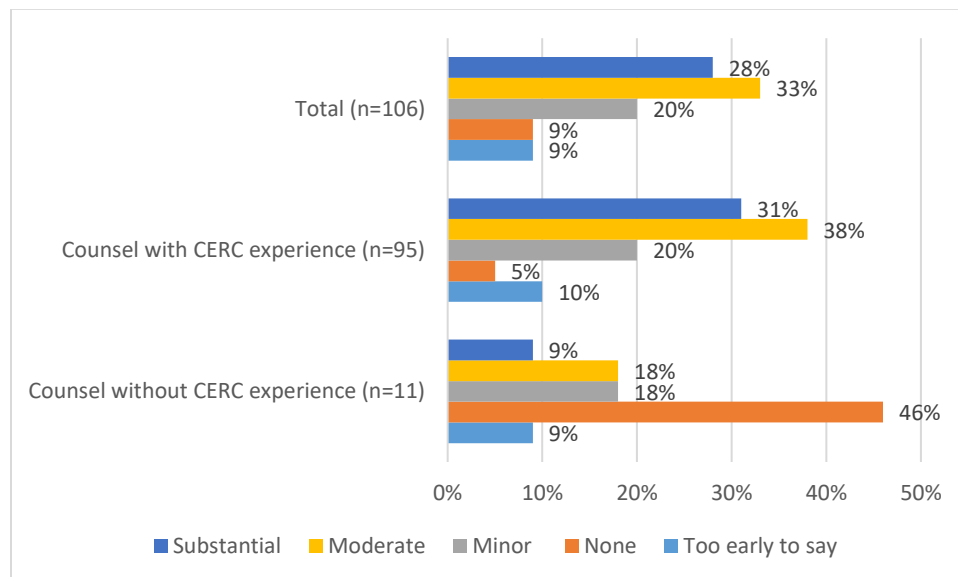
¹⁵ As described in Section 3.2, the evaluation considered two time periods chosen to avoid the height of potential pandemic impacts so that the results are more likely to reflect the availability of the CERC.

Impact on the number of self-represented accused persons

The rationale behind the CERC is that, by expanding coverage, more individuals will receive the assistance of counsel, thereby reducing the number of self-represented accused in Provincial Court. Survey results indicate that counsel are seeing that impact in court. Almost two thirds (61%) of respondents believe that the CERC had either a moderate or substantial impact on reducing the number of self-represented accused. Just under one third (29%) consider the impact to be minor or none. These results are similar to the Year One results. Key informants had difficulty commenting on this but of those who could, they believe that they have seen fewer self-represented accused in the last two years. The ability to attribute that to the CERC, at least in part, was thought to be reasonable given the nature of the contract and its expanded eligibility.

Figure 7: CERC impact on the number of self-represented accused persons (Counsel Survey 2 data)

How would you describe the impact that the Criminal Early Resolution Contract had on reducing the number of self-represented accused in Provincial Court on the types of criminal matters covered by the Criminal Early Resolution Contract?



Note: Respondents who could not provide an opinion are not included in the results (8%, n=9 of 115 counsel with CERC experience and 50%, n=16 of 33 counsel without CERC experience).

Impact on outcomes

Most closed CERCs (92%) have a resolution as shown in Table 24. CERCs have fewer contracts that end with guilty pleas than standard adult criminal contracts (54% compared to 65%) and have shown to be more likely to use alternative methods of resolving matters, such as stays and peace bonds. This finding indicates that counsel are exploring options other than guilty pleas. While key informants did not speak directly to this issue, they did note that self-represented accused persons are more likely to want to plead guilty rather than represent themselves as the desire to put the matter behind them is strong and they may not be aware they have a viable defence.

This finding raises questions about the view held by some counsel who responded to the survey and indicated hesitation about the limits on the retainer and/or expressed concern that the CERC encourages individuals to plead guilty (see Section 4.1 sub-sections on “Level of interest in taking CERCs” and “Overall level of support for CERCs and suggested improvements”).

Table 24: Outcomes for closed CERCs compared to other contracts - May 15, 2019 to May 31, 2021 (LABC CIS data)						
Resolutions	CERC (n=2,779)		CERC-converted (n=112)		Standard adult criminal contract (n=26,046)	
	#	%	#	%	#	%
Guilty plea	1,498	54%	46	41%	16,798	65%
Stay	583	21%	29	26%	4,235	16%
Peace bond	286	10%	13	12%	1,140	4%
Alternative measures	45	2%	--	--	93	<1%
Discharged	47	2%	1	1%	189	1%
No charge sworn	86	3%	--	--	173	1%
Acquitted	--	--	11	10%	248	1%
Found guilty	19	1%	6	5%	518	2%
Consent committal	--	--	--	--	23	<1%
Mistrial	--	--	--	--	2	<1%
Total – closed with resolution	2,564	92%	106	95%	23,419	90%
Contract closed without resolution						
Unresolved – file continuing (stop date has passed)	43	2%	--	--	203	1%
Unresolved – file closed	7	<1%	--	--	93	<1%
Client proceeding alone	22	1%	--	--	75	<1%
Change of counsel	34	1%	1	1%	545	2%
Failure to appear	17	1%	--	--	243	1%
Bail – Released (interim step)	89	3%	5	5%	1,177	5%
Bail – Detained (interim step)	3	<1%	--	--	201	1%
Committed to trial	--	--	--	--	90	<1%
Total – closed without resolution	215	8%	6	5%	2,627	10%
Total	2,779	100%	112	100%	26,046	100%

Note: Percentages may not sum to 100% due to rounding.

A closed contract has an outcome indicated in CIS (the fields of *N/A* and *unresolved – file continuing*, when the stop date was in the future, are excluded).

Each CERC could have multiple outcomes, which are given a hierarchy in the CIS data. The highest ranked outcomes are reported in the table.

Based on the contract outcomes listed for the six most common offences handled by CERCs, there is a difference depending on the type of offence. For offences such as driving while suspended or impaired, CERCs have similar outcomes to standard contracts. In contrast, for assault, spousal assault, theft under \$5,000, and threats to people, CERCs are less likely to have guilty pleas and more likely to have other outcomes such as stays, peace bonds (if applicable), no charges sworn, or alternative measures.

Table 25: Outcomes for closed CERCs compared to standard adult criminal contracts top six offences - May 15, 2019 to May 31, 2021 (LABC CIS data)

Offence	Main types of outcomes									
	Guilty plea		Peace bond		Stay		No charge sworn		Alternative measures	
	CERC	Standard	CERC	Standard	CERC	Standard	CERC	Standard	CERC	Standard
Assault	33%	52%	21%	14%	27%	21%	7%	2%	3%	1%
Driving while suspended	86%	84%	--	--	7%	8%	--	<1%	--	<1%
Assault: spousal	21%	35%	22%	19%	36%	32%	4%	2%	2%	<1%
Theft under \$5000	58%	77%	<1%	<1%	23%	12%	3%	<1%	6%	1%
Threats to people	46%	58%	22%	11%	18%	17%	4%	1%	--	<1%
Impaired/.08	89%	87%	--	--	3%	5%	1%	2%	--	1%

Note: Only main types of resolutions are included; percentage do not sum to 100%.

A closed contract has an outcome indicated in CIS (the fields of *N/A* and *unresolved – file continuing*, when the stop date was in the future, are excluded).

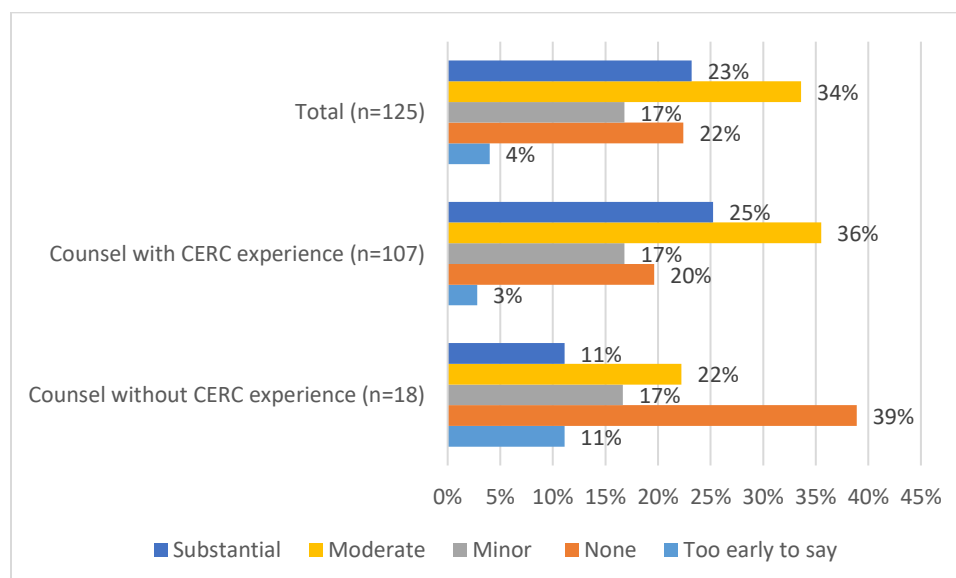
The offences are based on the most serious offence listed in the contract.

Each CERC could have multiple outcomes, which are given a hierarchy in the CIS data. The highest ranked outcomes are reported in the table.

The majority of counsel (57%) believed that CERCs have a moderate or substantial impact on achieving the same or better outcomes for clients than if CERCs were not available, an opinion which has support in the administrative data discussed above. Counsel who had not accepted a CERC were more likely to believe that CERCs have not had this impact. Key informants who commented noted that counsel can assess the accused person’s situation for defences or mitigating factors and make the Crown aware of these, which can support better outcomes for the accused person.

Figure 8: CERC impact on achieving the same or better outcomes (Counsel Survey 2 data)

How would you describe the impact that the Criminal Early Resolution Contract had on achieving the same or better outcomes for clients?



Note: Respondents who could not provide an opinion are not included in the results (7%, n=8 of 115 counsel with CERC experience and 45%, n=15 of 33 counsel without CERC experience).

Contribution to earlier resolution

By involving counsel early in cases so that they can explore resolution within the now 180-day service period, it is hoped that the CERC will contribute to earlier resolution of cases. The evaluation findings indicate that CERCs have contributed to earlier resolutions. Compared to standard adult criminal contracts, completed CERCs were resolved on average in 88 days compared to 104 for standard adult criminal contracts.

Table 26: Time to resolution for completed contracts with resolutions (LABC CIS data)

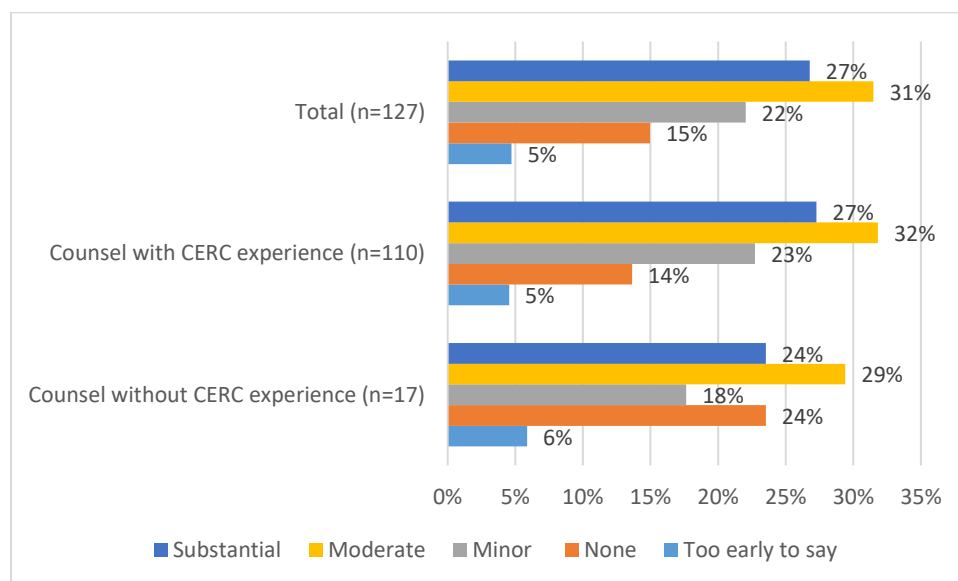
	CERC (n=2,564)	CERC-converted (n=106)	Standard adult criminal contract (n=23,394)
<i>Number of days</i>			
Average	112	223	145
Median	88	209	104
Maximum	700	666	848

Note: A completed contract with a resolution is one with an outcome indicating a resolution (e.g., *acquitted, alternative measures, guilty plea*).
The number of service days is based on the time period between the contract date and the result date. Resolutions include: acquitted, alternative measures, discharged, found guilty, no charge sworn, peace bond, or stay.

The majority of counsel (58%) also believe that CERCs have had a moderate to substantial impact on facilitating early resolution. Key informants who could comment on this believe that the CERC has facilitated earlier resolution as the communications between Crown and defence counsel can occur earlier in the process.

Figure 9: CERC impact on facilitating early resolution (Counsel Survey 2 data)

How would you describe the impact that the Criminal Early Resolution Contract had on facilitating early resolution for clients?



Note: Respondents who could not provide an opinion are not included in the results (4%, n=5 of 115 counsel with CERC experience and 50%, n=16 of 33 counsel without CERC experience).

Based on survey results for Year One and Year Two, most CERCs had resolved. Of the 779 informations reported on in the survey, 17% had not resolved.¹⁶ There can be numerous reasons why cases are not resolved through the CERC. The most common reasons noted by survey respondents were that the client had a defensible position to take to trial (or the client took that position themselves) or an agreement could not be reached with the Crown. Respondents indicating the service period was insufficient declined from Year One to Year Two, reflecting the expanded 180-day service period.

Table 27: Reasons for matters not resolved in CERCs (Counsel Survey 1 data)

What were the reasons that the matter was not resolved?

Reason not resolved	Counsel with unresolved informations		
	Year One (n=40)	Year Two (n=64)	Total (n=104)
Triable issue (client had defence to charges)	33%	28%	30%
Client's position	28%	23%	25%
Service period not sufficient time	28%	11%	17%
Crown's position (could not reach agreement)	15%	20%	18%
Client did not engage	8%	19%	14%
COVID-19 delays	8%	--	3%
Change of counsel	5%	6%	6%
Extension not sufficient time	3%	--	1%
Client wanted to self-represent	3%	--	1%
Interim invoice – still ongoing	--	17%	11%
Other	8%	2%	4%

Note: Respondents could provide more than one answer; totals may sum to more than 100%.

Contribution to greater efficiency for the court process

The evaluation evidence for CERC's contribution to greater efficiency for the court process was positive but less strong than for the other outcomes. In two areas, its impacts were seen very positively — assisting with the criminal justice system's COVID-19 pandemic response and addressing the difficulties that other criminal justice stakeholders have (judges, Crown, sheriffs) in their interactions with self-represented accused persons. However, CERC's ability to reduce the number of court appearances and enable more efficient use of court resources was considered to be less significant.

The COVID-19 pandemic impacted the criminal justice system as steps were immediately required to implement social distancing and other public health measures. In the early stages of the pandemic, the courts did not have trials for a few months. After a period of time, trials and dispositions moved back to in person; however, the Court continues to encourage video and teleconferences for remand processes as much as possible. According to key informants, the courts also took steps to reduce the number of appearances by lengthening adjournments to give the parties a greater opportunity to resolve the matter or prepare for the next appearance. Crown also looked for cases suitable for early resolution to reduce the volume, knowing that when the courthouse returned to more normal operations, there

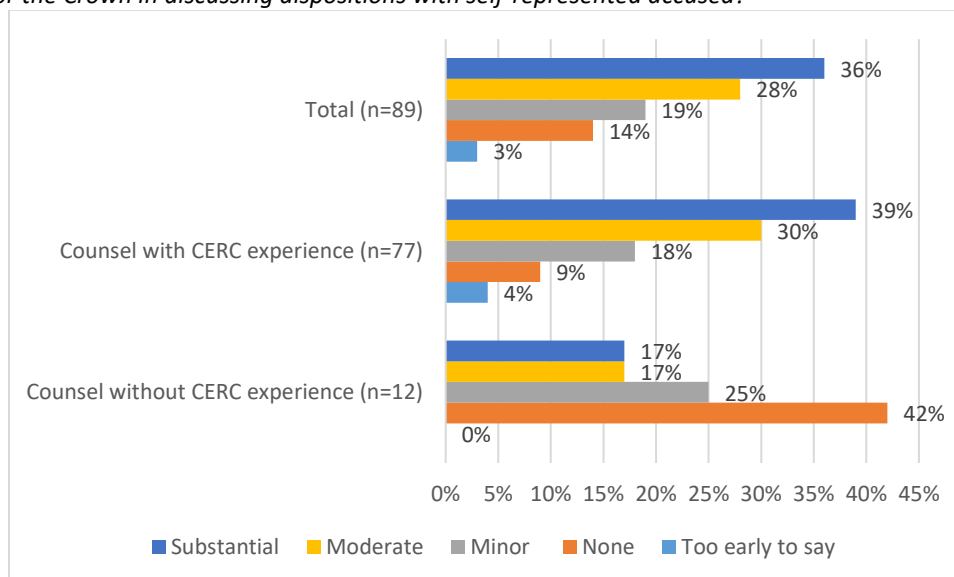
¹⁶ As noted in Table 24, based on LABC CIS data, 92% of closed CERCs were resolved. The survey data reflects a higher percentage of unresolved CERCs because it asked counsel for resolution by information (a CERC may have multiple informations). In contrast, CIS data does not provide a resolution rate by information, but overall, based on the highest ranked outcome. In addition, some of the CERCs in the survey were simply not closed yet. For these reasons, and because the sources of information are different (a survey and administrative data), the results will not necessarily align.

could be large backlog of cases. These steps to reduce the number of appearances (and/or ensure that appearances are more meaningful and will move the case forward) and to encourage earlier resolution also align with the goals of the CERC. For that reason, the CERC was a mechanism that supported the criminal justice system’s COVID-19 pandemic response, yet it also meant that the CERC outcomes cannot be separated from the pandemic response. Key informants were uniformly positive on how the CERCs supported these efforts by having counsel available to more self-represented accused and to engage in negotiations with the Crown. This also helped with obtaining police reports and other case related information, which has now moved to an electronic format. Some accused persons do not have computer access in order to receive these documents, which also complicated their ability to proceed self-represented.

Providing counsel for CERC clients removes the ethical challenges for the Crown in negotiating an early settlement with self-represented accused. Almost two thirds of respondents (64%) think that the CERC has had a moderate or substantial impact on addressing ethical challenges for the Crown in discussing dispositions with self-represented accused (see Figure 10). Key informants (judges, Crown, and sheriff services) all commented on how the involvement of counsel addresses their difficulties in interacting with self-represented accused persons who either look to them for legal advice or misunderstand the information being provided. For this reason, the key informants were pleased with the availability of the CERC to eligible accused persons.

Figure 10: CERC impact in addressing ethical challenges for the Crown (Counsel Survey 2 data)

How would you describe the impact that the Criminal Early Resolution Contract has had in addressing the ethical challenges for the Crown in discussing dispositions with self-represented accused?

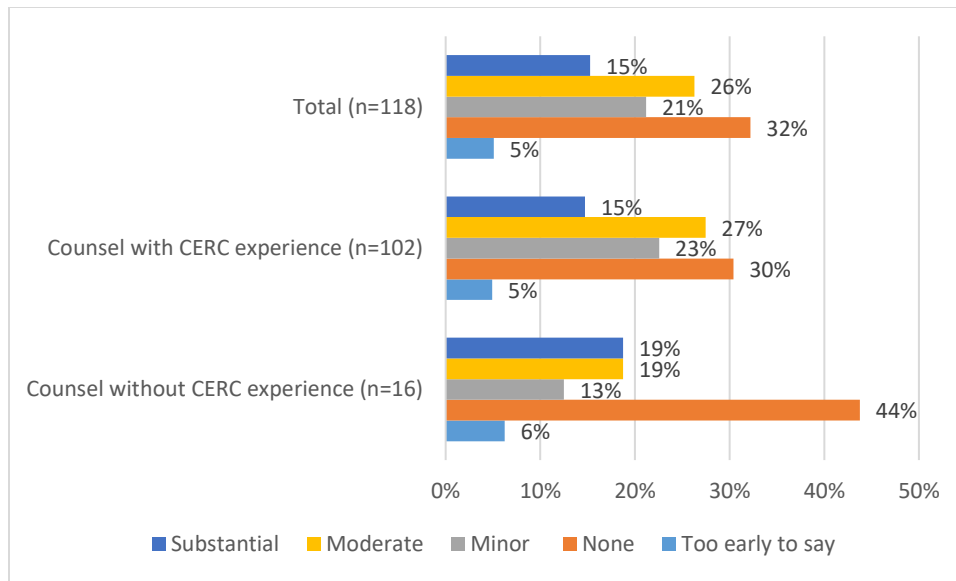


Note: Respondents who could not provide an opinion are not included in the results (33%, n=38 of 115 counsel with CERC experience and 64%, n=21 of 33 counsel without CERC experience).

Survey results were mixed on the impact of the CERC in reducing the number of court appearances, with 41% of respondents reporting that the CERC has had a moderate or substantial impact on reducing the number of court appearances compared to 53% who believe it has had minor to no impact. Most key informants could not comment on this, although a few noted that self-represented accused are more likely to have multiple appearances either waiting to get counsel or because they are not prepared. CERCs are seen as reducing these types of appearances by connecting these individuals to counsel earlier.

Figure 11: CERC impact in reducing the number of court appearances (Counsel Survey 2 data)

How would you describe the impact that the Criminal Early Resolution Contract has had in reducing the number of court appearances for the types of criminal matters covered by the Criminal Early Resolution Contract?

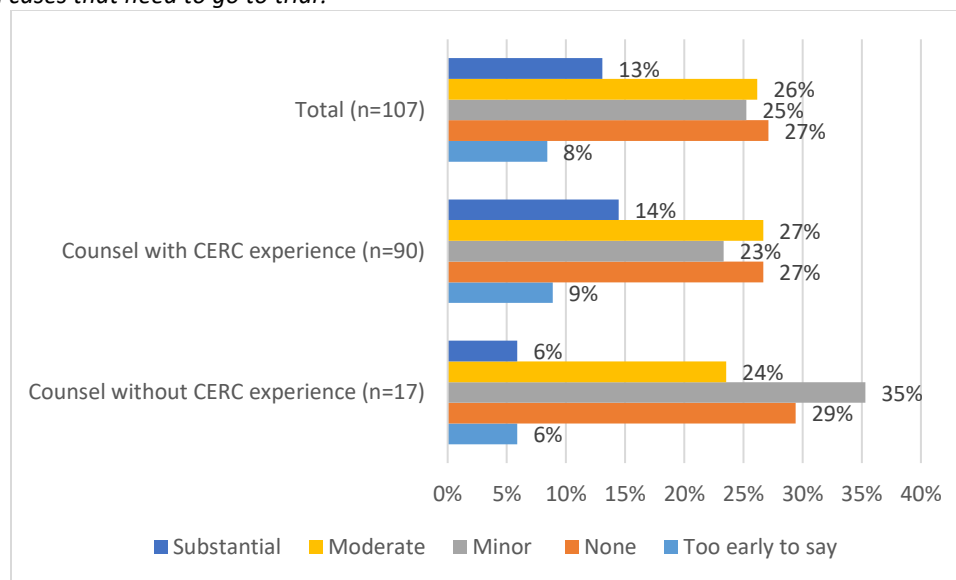


Note: Respondents who could not provide an opinion are not included in the results (11%, n=13 of 115 counsel with CERC experience and 50%, n=17 of 33 counsel without CERC experience).

Similarly, counsel generally do not believe that the CERC has had an impact on the efficient use of court, with 39% indicating a moderate or substantial impact compared to 52% reporting a minor or no impact. Key informants had a more positive opinion as they compared the availability of the CERC to individuals otherwise proceeding self-represented. They believe that court time is better used when counsel are present as self-represented accused persons do not understand the process or what is relevant. Court time is, therefore, taken with explanations of processes and presentations of information that is not pertinent to the case.

Figure 12: CERC impact on the efficient use of court resources (Counsel Survey 2 data)

How would you describe the impact that the Criminal Early Resolution Contract had on enabling courts to focus resources on cases that need to go to trial?



Note: Respondents who could not provide an opinion are not included in the results (22%, n=25 of 115 counsel with CERC experience and 50%, n=17 of 33 counsel without CERC experience).

The court data analysis was intended to contribute understanding the potential impacts of the CERCs, particularly around early resolution and the efficiency of the court process. While the pre/post analysis shows a substantial decline in the number of court appearances per completed case, as noted in Sections 3.3 and 3.4, the impacts of the COVID-19 pandemic and the CERC cannot be disaggregated. This analysis is included in Appendix E for information purposes.

5.0 Conclusion

Based on analysis of the surveys, interviews, and administrative data, the following conclusions can be made regarding the main evaluation questions.

5.1 Implementation

The evaluation found that the CERC continues to be working well in terms of its implementation and delivery since its launch on May 15, 2019.

- **CERCs are being increasingly utilized and fewer applications are being denied coverage.** Over its first two years, CERCs were issued in approximately 10% of adult criminal applications received by LABC. The proportion of refused applications declined, meaning that more applicants received legal aid assistance since the CERC became available. The issuance of CERCs has increased since the COVID-19 pandemic began, reflecting LABC's view that the CERC, as a service that is not court-based, provided an alternative when public health priorities required reduced personal attendance at courthouses. Key informants agreed that CERCs have been an effective mechanism to respond to the needs of the criminal justice system during the COVID-19 pandemic.
- **CERC clients are receiving a variety of services.** The types of services provided to CERC clients are what was anticipated for CERCs. Counsel most commonly assist clients by providing summary advice on their options, reviewing disclosures, and negotiating with the Crown to determine if the case can be resolved without a trial. The services provided to CERC clients could potentially be improved upon in a few areas. The evaluation found that most counsel are not providing referrals to other services and a minority are providing advice and information on how to self-represent to clients whose matter was not resolved by the CERC.

Recommendation: LABC should clarify its expectations related the services that they expect counsel to provide CERC clients, particularly related to referrals and advice/information on how to self-represent.

- **The service period extension has largely addressed the issue of CERCs not resolving within their initial service period.** Year One results indicated that the CERC service period of 90 days was insufficient time to explore resolution. The 180 day-service period now in effect has largely addressed this issue with administrative data and survey results reflecting fewer requests for extension of the service period. In particular, the administrative data shows about four fifths of CERCs now resolving within the service period and most counsel report that when they request an extension, it is approved. There is still a desire for a longer service period by some counsel due to needing more time for Crown to reassess or seek more information, or the client to complete some aspect of the plea agreement. Counsel who desire an increase in the service period typically wanted it extended to 12 months.

Recommendation: LABC should continue to monitor extension requests to determine whether, as the criminal justice system moves past the pandemic, any further extension to the service period is needed.

- **Most counsel are willing to accept CERCs and support LABC continuing to offer CERCs.** Almost two thirds of counsel surveyed have never declined a CERC and almost nine-tenths of respondents want LABC to continue to offer CERCs. There is, however, desire among many of the counsel who support the CERC for it to be modified. The most common modification suggested was further expanding the service period, improving the information given to clients on the limits of the retainer, making it easier to convert CERCs to standard contracts, and compensating counsel who attempt resolution (even if they cannot resolve) as currently CERCs do not provide sufficient payment under the tariff for the time that they take. Some counsel also mentioned discomfort with the limited scope of the contract.
- **CERCs are less timely on an LABC performance measure than standard adult criminal contracts.** The time between the intake interview date and the date of contract issuance is longer for CERCs than for standard adult criminal contracts.

Recommendation: LABC should review its processes to determine why it is taking longer for CERCs to be issued.

- **CERCs cost less than standard adult criminal contracts.** As expected, CERCs had a lower cost than standard adult criminal contracts. This was the case overall and for cases involving the six most common offences that are covered by CERCs, although the amount of difference varied by type of offence.
- **Awareness of the CERC among other justice stakeholders and understanding of the CERC could be improved.** Many of the other justice stakeholders interviewed were not aware of the CERC and mentioned that others in their position could better connect self-represented accused with legal aid if they knew of this type of contract. There were also issues noted with clients and other justice stakeholders not understanding the limits of the retainer. This points to the potential need for more outreach regarding the CERC and better materials for clients to clarify the nature of this contract.

Recommendation: LABC should conduct more outreach related to the CERC with Crown and sheriff services to build awareness.

Recommendation: LABC should review its communications with clients who receive CERCs to better support counsel in explaining the limited nature of the retainer to clients.

5.2 Outcomes

The evaluation found that the CERC is generally achieving its intended outcomes. However, these findings were impacted by the pandemic and the inability to rely on court data to show potential impacts of the CERC, particularly on earlier resolution and more efficient use of court.

- **CERCs are contributing to access to justice.** The evaluation findings support the CERCs' contribution to access to justice. Most CERCs are given to individuals who would not otherwise have been eligible for legal aid. Most counsel believe that CERCs have had a moderate or substantial impact on improving access to justice for individuals who would not otherwise receive legal aid. In addition, key informants (particularly judges and Crown) believe that the CERC has contributed to access to justice by providing legal representation to individuals who would not have received assistance (or as much assistance) previously. Both counsel survey respondents and other justice stakeholder key informants believe that the CERC has contributed to a reduction in self-represented accused. The outcomes on CERCs also reflect the nature of the types of cases — while most cases still resolve with a guilty plea, there are more cases that have other outcomes (e.g., stays, peace bonds, alternative measures) than standard adult criminal contracts.
- **CERCs are contributing to earlier resolution.** Compared to standard adult criminal contracts, completed CERCs were resolved on average in 88 days compared to 104 for standard adult criminal contracts. The majority of counsel also believe that CERCs have had a moderate to substantial impact on facilitating early resolution. Key informants concur and believe CERCs facilitate earlier resolution as communications between Crown and defence counsel can occur earlier in the process, particularly when compared to the situation with self-represented accused persons.
- **CERCs are contributing to the efficient use of the court process.** The evaluation evidence for CERC's contribution to greater efficiency for the court process was positive but less strong than for the other outcomes. CERCs were considered to support the needs of the criminal justice system during the COVID-19 pandemic as the situation would have been even more challenging for self-represented accused persons. Providing counsel for CERC clients was also thought to remove the ethical challenges for the Crown in negotiating an early settlement with self-represented accused persons as well as generally address the complicated situations that judges, Crown, and sheriff services encounter when someone is not represented. The CERCs' ability to reduce the number of court appearances and otherwise impact the efficiency of the court process was viewed as less substantial by counsel compared to the other outcomes (access to justice and earlier resolution). Key informants were more likely to see the CERCs as contributing to the efficiency of the court system because of their focus on the impact of having counsel and the difference that it makes to the operations of the criminal justice system.

- **LABC could also consider improving its data collection processes in order to better assess the implementation and impact of CERCs.**

Recommendations: LABC should consider improvements to the data collected as it relates to the CERCs (and potentially standard adult criminal contracts as well). In particular:

- collect some relevant data by criminal information to enable a better understanding of outcomes, resolution rates, why some contracts do not resolve, and why some CERCs are converted to standard criminal contracts;
- use one variable to capture whether CERCs have been converted to standard contracts so that they do not have the potential to be undercounted;
- add a variable to collect when contracts are closed (with or without resolution);
- have counsel provide the actual date of resolution of a contract/information as part of their final invoice; and
- ensure that fields related to financial and substantive eligibility have information that enables an analysis of the impacts of expanded eligibility without the current caveats that are noted in this report.

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Appendix A – Evaluation Matrix

Evaluation of the Criminal Early Resolution Contract – March 24, 2022

Evaluation matrix for the Criminal Early Resolution Contract (CERC) Service – Year Two		
Questions	Indicators	Data sources
1. To what extent has CERC been implemented as expected?	<ul style="list-style-type: none"> • Number of CERCs granted (and as percent of LSS applications) over time • Number and percent of CERCs receiving extensions • Number and percent of CERCs with changes of counsel • Number and percent of CERCs converted to full representation contracts • Cost per CERC (minimum, median, mean, maximum) • Opinion of lawyers/stakeholders on any challenges with CERC 	<ul style="list-style-type: none"> • LSS CIS database • Lawyer surveys • Case studies
2. To what extent has CERC contributed to access to justice?	<ul style="list-style-type: none"> • More applicants accepted for coverage <ul style="list-style-type: none"> ○ Number and percent of LSS applicants who do not meet eligibility guidelines for full representation but received CERC ○ Comparison pre/post CERC of the number and percent of LSS applicants not accepted for any type of coverage (compare equivalent time period before CERC to time period since CERC has been offered) • Types of coverage expansion <ul style="list-style-type: none"> ○ Number and percent of applicants receiving CERC by reason – meet financial guidelines for full service but not coverage guidelines or meet coverage guidelines but not financial guidelines without expanded financial coverage • Timeliness of LSS service (interview date to contract issue date) compared to full representation contracts • Types of services provided by counsel • Referrals made by counsel to legal/non-legal services • Opinion of lawyers/other stakeholders on whether fewer self-represented litigants in types of cases covered by CERC 	<ul style="list-style-type: none"> • LSS CIS database • Lawyer surveys • Case studies
3. Has the CERC service led to the earlier resolution of cases?	<ul style="list-style-type: none"> • Number and percent of closed CERCs resolved by type of outcome (with and without extensions) • Number and percent of CERCs not resolved (i.e., outcome does not indicate resolution) • Number of days for CERCs that were resolved from contract issue date to resolution • Opinion of lawyers/stakeholders on reasons why CERC cases are not resolved • Opinion of lawyers/stakeholders on whether cases are resolved earlier • Opinion of lawyers/stakeholders on barriers to earlier resolution 	<ul style="list-style-type: none"> • LSS CIS database • Lawyer surveys • Case studies
4. Has the CERC service led to greater efficiency for the court process?	<ul style="list-style-type: none"> • Opinion of lawyers/stakeholders on whether the CERC has increased efficiency in the court process • Number and percent of CERCs resolved before the trial fixed date in case study locations and comparison pre-CERC • Number of days to resolution (first appearance post-bail hearing to resolution) of CERCs in case study locations and comparison pre-CERC • Number of court appearances in matters involving similar criminal charges to the CERC cases (excluding bail hearings) in case study locations and comparison pre-CERC 	<ul style="list-style-type: none"> • Lawyer surveys • Case studies

Appendix B – Survey Questionnaires

Survey 1: Counsel who had invoiced for a CERC

Evaluation of the Criminal Early Resolution Contract

Welcome to the survey for the Evaluation of the Criminal Early Resolution Contract. PRA Inc. is conducting this survey of counsel on behalf of Legal Aid BC. We would like to learn about your experiences providing services under a Criminal Early Resolution Contract.

The survey takes five minutes to complete. Your participation is voluntary. The information that you provide is confidential; results will be reported in aggregate.

You may leave the survey at any time and come back later to complete the questions. If you do leave the survey prior to completion, we ask that you wait approximately 15 minutes to re-enter to give the survey a chance to refresh.

If you have any questions about the survey, please contact Amy Richmond of PRA Inc. at richmond@pra.ca. If at any time you experience technical difficulties while completing the survey, please contact survey@pra.ca. If you have any questions about the evaluation, please contact Rupinder Sahota, the Evaluations and Policy Coordinator for Legal Aid BC, at Rupinder.Sahota@legalaid.bc.ca.

We may link your survey responses to your Criminal Early Resolution Contract in order to obtain a more complete picture of the work completed under this contract. Please limit your responses to only those services provided for the client and the contract noted on your invitation email.

1. Were you able to resolve the criminal matter under the Criminal Early Resolution Contract? (If your contract includes multiple informations, please check all that apply based on the status of each information)
 - a. Yes, without an extension (resolved within six months)
 - i. Please specify number of informations resolved without an extension (resolved within six months)
 - b. Yes, with extension
 - i. Please specify number of informations resolved with an extension
 - c. No
 - i. Please specify number of informations not resolved
 - d. Not completed yet, as requesting extension (if 1d ONLY – go to end of survey and will contact again when matter is complete)
 - i. Please specify number of informations for which you are requesting an extension

If your Criminal Early Resolution Contract includes multiple informations, please respond to the following questions, considering the informations to which they are applicable (resolved, resolved with extension, not resolved). If the answer depends on more than one information, please answer based on the information that you believe is most representative of your experience.

2. (if answered Q1c) For the informations that were not resolved, did you request an extension?
 - a. Yes
 - b. No

3. (If answered Q1b or Q2a) What were the reasons for the requested extension(s)? Choose all that apply.
 - a. To allow client to complete an aspect of the plea agreement (e.g., community service, counselling)
 - b. To prepare/obtain a Gladue report
 - c. To prepare/obtain information in support of the client's position
 - d. To permit the Crown time to reassess or seek further information
 - e. Other (please specify)

4. (if answered Q1c) What were the reasons that the matter was not resolved? Choose all that apply.
 - a. Triable issue (client had defence to charges)
 - b. Crown's position (could not reach agreement)
 - c. Client's position
 - d. Client did not engage
 - e. Six months not sufficient time
 - f. (if answered Q2a) Extension not sufficient time
 - g. Other (please specify)

5. What types of services did you provide your client under the Criminal Early Resolution Contract?
 - a. Summary advice on options
 - b. Review of disclosure from Crown (including police report)
 - c. Negotiations with Crown
 - d. Court attendance to speak to disposition
 - e. Bail variation
 - f. Referrals to resources to assist with non-legal issues
 - g. Referrals to legal resources to assist with other (non-criminal) legal issues
 - h. (if answered Q1c) Referrals to other resources to assist with criminal matter
 - i. (if answered Q1c) Advice or information on how to represent self in court
 - j. Other (please specify)
 - k. None, client never engaged (Skip to Q8)

6. (If did not indicate 5f-h) What were the reasons that you did not provide certain types of referrals to other resources? Check all that apply.
 - a. Unaware of other appropriate resources
 - b. Lack of appropriate resources in my community
 - c. Lack of time to provide this type of assistance to client
 - d. Referrals not warranted under the circumstances
 - e. Client did not ask for referrals
 - f. Other (please specify)

7. (if answered Q1c, but did not indicate 5i) What were the reasons you did not provide the client with advice or information on how to represent themselves in court? Check all that apply.
 - a. Not needed – client had access to self-help materials
 - b. Not needed - client was arranging legal representation
 - c. Client did not ask for this type of information or advice
 - d. Client had cognitive issues that meant they could not comprehend this type of information or advice
 - e. Lack of time to provide this type of assistance to client
 - f. Other (please specify)

8. Do you have any comments on your experience with the Criminal Early Resolution Contract that you want to share? (OPEN-END)

Survey 2: All counsel who have provided criminal legal aid (standard or CERC)**LANDING PAGE FOR SURVEY**

Welcome to the survey of counsel that PRA Inc. is conducting on behalf of Legal Aid BC. This survey is being sent to all counsel who have handled a criminal matter for a legal aid client in the last year. While the survey is for the Evaluation of the Criminal Early Resolution Contract, you do not need to have provided legal services under a Criminal Early Resolution Contract. We would like to gather all counsel's opinions about this new type of legal services contract.

The survey takes five minutes to complete. Your participation is voluntary. The information that you provide is confidential; results will be reported in aggregate.

You may leave the survey at any time and come back later to complete the questions. If you do leave the survey prior to completion, we ask that you wait approximately 15 minutes to re-enter to give the survey a chance to refresh.

If you have any questions about the survey, please contact Amy Richmond of PRA Inc. at 1-888-877-6744 or richmond@pra.ca. If you experience technical difficulties while completing the survey, please contact survey@pra.ca. If you have any questions about the evaluation, please contact Rupinder Sahota, the Evaluations and Policy Coordinator for Legal Aid BC, at Rupinder.Sahota@legalaid.bc.ca.

The Criminal Early Resolution Contract provides non-trial resolution services to clients who do not qualify for a criminal standard contract for representation but who are within \$1,000 per month of the standard financial eligibility threshold. Clients do not need to face a risk of jail upon conviction to be eligible for this service.

1. In the last 12 months, have you provided criminal legal aid services under any of the following? Check all that apply.
 - ₁ Client-based standard contract
 - ₂ Criminal Early Resolution Contract
 - ₃ Duty counsel

Questions 2-5 will be asked of respondents who indicate 2 to Q1.

2. Did you experience any of the issues below with the Criminal Early Resolution Contracts that you had in the last 12 months? Check all that apply.
 - ₁ Crown did not understand limits of your retainer
 - ₂ Court did not understand limits of your retainer
 - ₃ Client did not understand limits of your retainer
 - ₄ Difficulty getting off the record
 - ₀ None of the above
 - ₈ Don't recall

3. In April 2020, Legal Aid BC extended the service period for Criminal Early Resolution Contracts from 90 days to six months. Thinking of the last 12 months, did you experience any of the following? Indicate the answer that most reflects your experience.
- ₁ Most of my requested extensions to the service period were approved.
 - ₂ Some of my requested extensions to the service period were approved and some were rejected.
 - ₃ Few of my requested extensions to the service period were approved and most were rejected.
 - ₀ I did not request any extensions to the service period.
4. (If Q3 response is 2 or 3) Did you disagree with Legal Aid BC's reasons for denying any of your requested extensions?
- ₁ Yes
 - i. (If select 1 to Q4: Please state why you disagree.)
 - ₀ No
 - ₉ No response
5. What is your opinion on the service period extension?
- ₁ Six months is sufficient
 - ₂ Six months is insufficient
 - i. (If select 2 to Q5: What length of service period would you prefer?)
 - ₉ No opinion

Questions 6-END will be asked of all respondents.

6. Have you ever declined to accept a Criminal Early Resolution Contract?
- ₁ Yes
 - ₀ No
 - ₈ Don't recall
7. (If Q6 response is 1) Why have you declined to accept a Criminal Early Resolution Contract? Check all that apply.
- ₀₁ I was too busy at the time to take on more work.
 - ₀₂ These types of contracts do not provide counsel with sufficient time to do the work (service period).
 - ₀₃ These types of contracts do not provide sufficient payment under the tariff.
 - ₀₄ Clients do not sufficiently understand the limited scope of these contracts.
 - ₀₅ I am not comfortable with the limited scope of these contracts.
 - ₆₆ Other (please specify) _____
 - ₈₈ Don't know

8. How would you describe the impact that the Criminal Early Resolution Contract has had in the following areas? (will use scale: Substantial, Moderate, Minor, None, Too early to say, Don't know)

	Substantial	Moderate	Minor	None	Too early to say	Don't know
a. Reducing the number of self-represented accused in Provincial Court for the types of criminal matters covered by the Criminal Early Resolution Contract.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 8
b. Addressing ethical challenges for Crown in discussing dispositions with self-represented accused.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 8
c. Improving access to justice for individuals who would not otherwise receive legal aid.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 8
d. Facilitating early resolution for clients	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 8
e. Achieving the same or better outcomes for clients	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 8
f. Reducing the number of court appearances for the types of criminal matters covered by the Criminal Early Resolution Contract.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 8
g. Enabling courts to focus resources on cases that need to go to trial.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 8
h. Please list any other impacts that you have observed and rate them (will give two lines) ..	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 8

9. Should Legal Aid BC continue to offer the Criminal Early Resolution Contract?

- 1 Yes
- 2 Yes, with modifications
- 0 No
- 8 Don't know

10. (If 0 to Q9) Why do you think that Legal Aid BC should no longer offer the Criminal Early Resolution Contract?

11. (If 1, 2, or 8 to Q9) Do you have any suggestions for improving the Criminal Early Resolution Contract? (open-end)

- 0 No suggestions

Appendix C – Interview Guide

**Evaluation of the Criminal Early Resolution Contract
Interview Guide
(Judges, Administrative Judges, Judicial Case Managers, Crown, Sheriffs)**

Legal Aid BC is conducting an evaluation of its Criminal Early Resolution Contract (CERC). The CERC provides non-trial resolution services to clients who do not qualify for a criminal standard contract for representation but who are within \$1,000 per month of the standard financial eligibility threshold. Clients do not need to face a risk of jail upon conviction to be eligible for this service. The CERC provides non-trial resolution services. If the client wants to explore resolution, counsel can negotiate potential dispositions with the Crown and, if a plea is reached, can also appear in court to speak on disposition. If the client is not interested in resolving the matter without a trial, counsel can provide summary advice on their options related to self-representation or legal representation.

The evaluation covers the period from the launch of the CERC (May 15, 2019) to the present. Its focus is on the implementation of the CERC and any progress toward achieving its anticipated benefits, which include:

- allowing a wider range of individuals to access legal services which they could not previously access;
- allowing lawyers who do legal aid to help more clients who would otherwise have had to represent themselves; and
- reducing the use of court system resources on unnecessary court appearances through earlier resolution of more cases.

Legal Aid BC hired PRA Inc., an independent research company, to assist in the evaluation. One component of the evaluation is to conduct telephone interviews with stakeholders who are familiar with the CERC. Your participation is voluntary.

The interview should take approximately 45 minutes. The information we gather through the interviews will be summarized in aggregate form. With your permission, we will audio-record the interview. Although we will take notes throughout the interview, no one outside of PRA will see these notes or listen to the recordings.

We realize that you may not be able to answer all questions. If that is the case, please let us know, and we will skip to the next question.

1. Please briefly describe your position and your involvement with the CERC.

Implementation of the CERC

2. Has Legal Aid BC clearly articulated the limits of counsel's retainer under a CERC? Are there any issues that either the court or the Crown has experienced with the limits of the counsel's retainer under the CERC?
3. We would like to understand how the COVID-19 pandemic impacted the CERC and the work that you do.
 - a. What have been the pandemic's impacts on Provincial Court operations and how has the Provincial Court responded to minimize the impact? (*Probe: attempts to decrease number of personal appearances, longer adjournments to give counsel more time to move matters forward, higher expectations at pre-trial conferences for progress on the case*)

- b. Has the availability of the CERC had any impacts, positive or negative, on the criminal justice system's response to the pandemic?
- c. Have you noticed any issues with how Legal Aid BC is managing its services during the pandemic, particularly as it relates to the CERC? (*Probe: connecting clients to lawyers*)

Expected outcomes

4. Do you think that the CERC, as currently offered, has an impact on access to justice? If yes, in what ways? If not, why not? (*Probe: fewer self-represented accused; counsel connected to clients earlier*)
5. Has the CERC service supported earlier resolution of cases? If yes, in what ways? If not, why not?
6. Do you think that the CERC, as currently offered, has supported greater efficiency for the court process? If yes, in what ways? If not, why not? (*Probe: fewer trials, courts can focus more resources on cases going to trial*)
7. Does the CERC make your job easier in any ways? (*Probe for Crown: does the CERC help address ethical challenges for Crown in discussing dispositions with self-represented accused*)
8. Do you believe that the CERC should continue to be offered by Legal Aid BC? Please explain.
9. Do you have any improvements that you would suggest for the CERC?

Thank you for your participation.

Appendix D – Demographic of LABC Adult Criminal Applicants

Demographics of LABC adult criminal applicants from May 15, 2019 to May 31, 2021 (LABC CIS data)				
Profile	CERC issued (n=3,667)	Standard adult criminal contract issued (n=21,299)	Application refused (n=5,016)	Total (n=29,982)
Gender				
Male	72%	80%	77%	78%
Female	28%	20%	23%	22%
Other	<1%	<1%	<1%	<1%
Age				
18 – 29	30%	27%	29%	27%
30 – 39	30%	34%	30%	33%
40 – 49	20%	23%	21%	22%
50 – 59	13%	13%	13%	13%
60 – 69	7%	4%	7%	5%
No response	<1%	--	--	<1%
Indigenous ancestry				
Yes	26%	29%	22%	28%
No	69%	66%	75%	68%
Unknown	5%	5%	4%	5%
Birth country				
Canada	95%	96%	94%	96%
Other than Canada	5%	4%	6%	4%
Special needs				
Mental health	7%	18%	8%	15%
Physical	2%	3%	2%	3%
Intellectual or learning	2%	2%	2%	2%
Hearing or visual	<1%	<1%	<1%	<1%
Visual	<1%	<1%	<1%	<1%
None	89%	77%	89%	81%
<p>Note: Percentages for each profile category may not sum to 100% due to rounding. Adult criminal applications can have multiple contracts issued. If anyone contract was a CERC, the application is counted in the CERC category. Refused adult criminal applications do not specify a type of contract. The results in this table are based on unique applicants. Applicants with multiple applications are represented in this table once.</p>				

**Appendix E – Analysis of Abbotsford and
Kelowna Provincial Court Data**

Table 1 summary statistics indicate that there exists a clear difference in number of appearances post-bail hearing to conclusion from 2017-18 to 2020-21, in both Abbotsford Law Courts and Kelowna Law Courts. Total number of appearances dropped in Abbotsford from 858 in 2017-18 to 689 in 2020-21 (a 20% drop), and in Kelowna from 1,249 to 309 in the same time period (a 75% drop.) Numbers of concluded cases dropped from 167 to 129 in Abbotsford (a 23% decrease) and from 222 to 50 in Kelowna (a 77% decrease.)

The drop in the number of concluded cases likely impacted the corresponding drop in the number of appearances. It is unclear how strongly the CERC influenced these drops in both numbers. The effects of the COVID-19 pandemic restrictions likely influenced these numbers as well to an unknown degree, for example, in terms of the speed at which cases progress through the Provincial Courts. Without more data on the effects of the pandemic on the criminal justice system, it is difficult to determine what proportion of these decreases can be attributed to the CERC.

Table 1: Number of appearances post-bail hearing to conclusion						
Location	Total # appearances*	Total # concluded cases	Average # appearances	Median # appearances	Minimum # appearances	Maximum # appearances
	Cases opened and concluded between Oct. 1, 2017 and May 31, 2018					
Abbotsford Law Courts	858	167	5.1	5	0	18
Kelowna Law Courts	1,249	222	5.6	5	0	17
Cases opened and concluded between Oct. 1, 2020 and May 31, 2021						
Abbotsford Law Courts	689	129	5.3	5	1	26
Kelowna Law Courts	309	50	6.2	6	0	15

Source: JUSTIN and CRIMBI, received January 10, 2022.
 * This refers to total number of appearances from post-bail hearing to case conclusion.

Figure 1 below charts the cumulative number of appearances¹⁷ for Abbotsford and Kelowna Law Courts. The two graphs illustrate the difference between number of appearances in 2017-18 compared to 2020-21. Though both graphs show a clear gap between the time periods, the gap in cumulative number of appearances for Kelowna is much wider (from over 1,200 cases to just over 300, as stated in Table 1 above.) Wilcoxon rank sum tests¹⁸ (also called Mann-Whitney U tests) confirmed that the differences observed in the graphs in Figure 1 are statistically significant (at $p < 0.20$ for Abbotsford and $p < 0.05$ for Kelowna), which indicates that these gaps between the two time periods are unlikely to have resulted randomly, and that concluded cases have fewer number of appearances from post-bail hearing to conclusion in the later time period of 2020-21. The statistical significance level for Abbotsford is weaker

¹⁷ A cumulative distribution shows the sum of the class and all classes below it in the distribution, which entails adding up a value and all of the values that came before it. This means the last value in the distribution (in this case, 167 appearances, for instance) should be equal to the sample size. Cumulative distributions are used in cases where the outcome of interest is to compare total values in two different samples at each point in the distributions, to see whether one distribution contains greater values overall than the other.

¹⁸ The Wilcoxon rank sum test is a non-parametric test of differences in distributions; it does not rely on assumptions of a normal distribution for the variables being tested. Because the data display non-normal distributions, with the bulk of frequencies clustered in the lower numbers of appearances (making it left-skewed), a parametric test is unsuitable; therefore, a non-parametric test was chosen in this case. Wilcoxon rank sum tests compare the probability of getting higher values from group 1 with the probability of getting higher value from group 2.

than for Kelowna; this can also be observed in the graphs. The reason for the disparities in the level of statistical significance is likely due to the high variability of the data for Abbotsford, as well as the likely smaller effect size.

Figure 1:
Cumulative number of appearances by number of appearances for concluded cases (post-bail hearing to conclusion), by location and time period

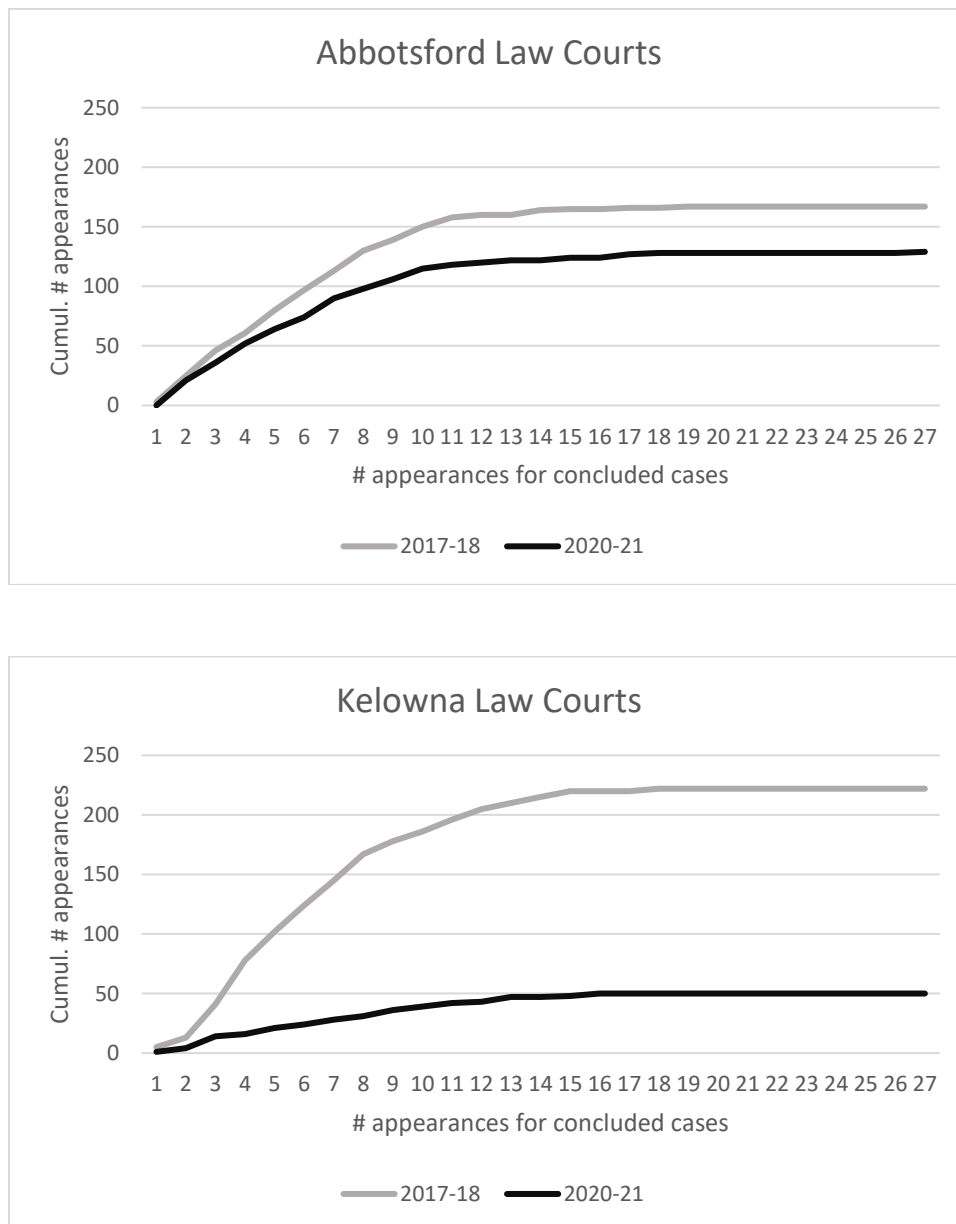


Table 2 summary statistics indicate that there also exists a difference in number of non-trial appearances from first appearance post-bail hearing to conclusion, between 2017-18 and 2020-21, in both Abbotsford Law Courts and Kelowna Law Courts. Total number of non-trial appearances dropped in Abbotsford from 926 in 2017-18 to 660 in 2020-21 (a 29% drop), and in Kelowna from 1,581 to 633 in the same time period (a 60% drop). Numbers of concluded cases dropped from 252 to 163 in Abbotsford (a 35% decrease) and from 410 to 144 in Kelowna (a 65% decrease).

Table 2: Number of non-trial appearances from first appearance post-bail hearing to conclusion						
Location	Total # appearances *	Total # concluded cases	Average # appearances	Median # appearances	Minimum # appearances	Maximum # appearances
	Cases opened and concluded between Oct. 1, 2017 and May 31, 2018					
Abbotsford Law Courts	926	252	3.7	3	0	14
Kelowna Law Courts	1,581	410	3.9	3	0	16
Cases opened and concluded between Oct. 1, 2020 and May 31, 2021						
Abbotsford Law Courts	660	163	4.0	3	0	21
Kelowna Law Courts	633	144	4.4	4	0	13

Source: JUSTIN and CRIMBI, received January 10, 2022.
 * This refers to total number of appearances from post-bail hearing to case conclusion.

Figure 2 below charts the cumulative number of non-trial appearances for Abbotsford and Kelowna Law Courts. The two graphs illustrate the difference between number of non-trial appearances in 2017-18 compared to 2020-21. As in Figure 1 above, both graphs show a gap between the time periods; once again, the gap for Kelowna is wider than the gap for Abbotsford. Wilcoxon rank sum tests confirmed that the differences observed in the graphs in Figure 2 are statistically significant (at $p < 0.25$ for Abbotsford and $p < 0.10$ for Kelowna). This means that concluded cases likely have fewer number of non-trial appearances from post-bail hearing to conclusion in the later time period of 2020-21. The statistical significance level for Abbotsford is weaker than for Kelowna in this case as well, as noted in Table 2 and the graphs in Figure 2. The reason for the disparities in the level of statistical significance is the same here as above: the high variability of the data and smaller effect size in the Abbotsford data.

Figure 2.
Cumulative number of appearances by number of non-trial appearances for concluded cases (from first appearance post-bail hearing to conclusion), by location and time period

