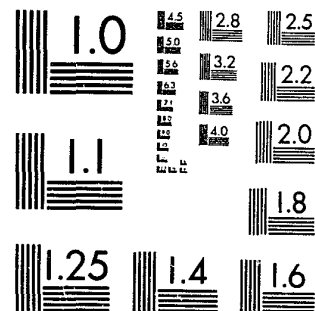


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THE BURNABY, BRITISH COLUMBIA EXPERIMENTAL PUBLIC DEFENDER PROJECT: AN EVALUATION REPORT

REPORT V : TARIFF ANALYSIS

PATRICIA L. BRANTINGHAM

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Canada

REPORT V

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PUBLIC DEFENDER PROJECT: AN EVALUATION

TARIFF ANALYSIS

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DECEMBER 1981

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NOTE

THE BURNABY, BRITISH COLUMBIA EXPERIMENTAL
PUBLIC DEFENDER PROJECT: AN EVALUATION

IS REPORTED IN SEVEN DIFFERENT VOLUMES:

- I PROJECT SUMMARY
- II EFFECTIVENESS ANALYSIS
- III COST ANALYSIS
- IV CLIENT SATISFACTION ANALYSIS
- V TARIFF ANALYSIS
- VI PUBLIC DEFENCE/COURT RELATIONSHIP ANALYSIS
- VII DISTRIBUTIONAL IMPACT ANALYSIS

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PREFACE

So many people were involved in providing information and assistance during this project that it is impossible to mention all of them by name. Special mention must be given to members of project staff who spent many long hours. Mention should also be made of the cooperation received from staff of the Legal Services Society of British Columbia. Final thanks must be given to the members of the Private Bar in British Columbia who, through interviews and written comments, provided information necessary for the design and execution of this evaluation.

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Project Summary

Description of the Evaluation

During 1979 and 1980 an experimental public defence office was established in Burnaby, British Columbia. The office was run by the Legal Services Society of British Columbia, an independent society with the mandate to deliver legal aid in British Columbia. The office was set up to determine the feasibility of introducing staff criminal defence offices within the Province. Currently most criminal legal aid in British Columbia is delivered by private lawyers paid under a fee for service tariff. Payment for legal aid under a fee for service tariff is generally called a judicare mode of delivering legal aid.

The experimental public defence office was structured within an evaluation framework. The project was evaluated during the two year experimental operation. Prior to the opening of the office an evaluation was designed. The office was run under an on-going evaluation strategy. Information was collected during the two years of experimental operation. This report presents some of the results of that evaluation.

There were six major goals in the evaluation:

- Analysis of the relative effectiveness of a public defence mode and a judicare mode of delivering criminal legal aid;
- Analysis of the relative costs of delivering legal aid under the two modes;
- Determination of client satisfaction with public defence counsel and judicare counsel representation;
- Analysis of the time spent by lawyers providing criminal legal aid and an analysis of the existing possible alternative tariff structures;
- Determination of the relationships which develop between criminal staff counsel, Crown counsel and judges.
- Projection of the impact on the private bar of the

introduction of a broader network of criminal defence offices.

The results relating to each of the major goals in the evaluation analyses, and an overall summary, are presented in separate reports and are available upon request. A list of the titles of the reports are given at the beginning of this report.

This report examines the tariff structure in British Columbia and generates some preliminary time norms for criminal legal aid services. A brief summary of the actual evaluation experiment and the results of the other major segments will be presented before the tariff analysis is reported.

The Public Defence Office was a small criminal legal aid office set up near the provincial court in Burnaby. The office staff included three full-time staff lawyers, a paralegal and a secretary. The office functioned as a general, non-specialized, criminal defence office. All lawyers handled all types of criminal cases. All lawyers handled all appearances, from first appearance through to disposition. All lawyers provided duty counsel services. The paralegal supplemented the lawyers' duties by interviewing clients, assisting lawyers, and providing entry point social services for clients by making referrals to social agencies.

The office structure was representative of the structures which most likely could be set up in other cities in the Province if the public defence mode of delivering legal aid were more widely adopted. Most cities in British Columbia could only support small offices such as the office in Burnaby.

The evaluation of the public defence operation involved a comparison of public defence counsel cases with cases handled by judicare counsel in the Burnaby, New Westminster, and Vancouver Courts. The public defence counsel primarily represented clients in Burnaby Provincial Court. To a lesser extent, they acted for clients in the County and Supreme Court in New Westminster. For comparison purposes, two groups of judicare cases were used. The Public Defence Office in Burnaby did not handle all criminal legal aid clients in Burnaby. Some clients were referred to private counsel. The cases referred to private counsel were used in the evaluation. These cases were heard in the same courts, Burnaby Provincial Court and New Westminster County Court,

as the cases handled by public defence counsel. Cases handled by judicare counsel in Vancouver Provincial, County and Supreme courts were also used for comparison purposes.

Summary of Effectiveness Analysis

Clients of public defence counsel and judicare counsel received guilty outcomes at about the same rate, but there were differences in the procedures which were used to reach a determination of guilt. Public defence counsel pleaded their clients guilty more frequently than judicare counsel. Judicare counsel went to trial more often. However, when guilty pleas and determinations of guilt were combined, there was little difference in the overall rate of guilty outcomes for the two modes of delivering legal aid.

There were differences in the patterns of sentences received by public defence and judicare counsel clients. Public defence counsel clients received fewer jail sentences than clients of judicare counsel. As something of a balance, judicare clients received more stays of proceedings or withdrawals of charges.

Public defence counsel engaged in more discussions with Crown. The discussions resulted in more guilty pleas and Crown recommendations for sentences. The overall pattern of justice under the public defence mode was one of more negotiations, more guilty pleas, but fewer incarceration sentences than under the judicare mode. Differences in pleas, negotiations and sentences occurred within generally similar total patterns of guilty and non-guilty outcomes.

Summary of Relative Costs

Under the experimental structure in Burnaby, the average costs per case for public defender cases was \$9 more than for judicare cases in Burnaby, but \$25 less than judicare cases in Vancouver. The average cost for judicare cases in Burnaby was \$225. In Vancouver the average was \$264 per case. The average cost for public defender cases was \$235.

The Burnaby Office was a three lawyer office, a size similar to what could be set up in other British Columbia cities if the public defence mode of delivering legal aid were expanded. Because it was a small office, average case

costs were susceptible to fairly large variation with small changes in caseloads. If Burnaby public defender case flow figures were increased one case a month, there would be no appreciable difference in average costs per case for the two modes of delivering legal aid. In fact, the public defence mode would be marginally less expensive. It should be noted that, if caseloads fell much below the level the office experienced during the experimental operation, the operation would become cost inefficient. Caseloads fluctuated some month to month. The fluctuation in caseload in the Criminal Defence Office in Burnaby was the result of internal management decisions and some variability in application rates. The Public Defence Office did not handle all criminal cases in Burnaby, some were referred to private counsel. The decision to refer was made when the director of the office believed the staff lawyers were fully booked or when co-accused conflicts occurred or when another lawyer was already acting for an accepted applicant. Caseloads could be increased or decreased. For a small public defence office to remain cost efficient, at a local level of analysis, caseloads would have to be maintained.

Analysis was also performed to project costs under increased tariffs and under projected staff salary increases. Generally the staff model of delivering legal aid was found to be cost competitive with the judicare mode under expected tariff increases.

A small public defence operation appears to produce similar case costs to judicare delivery of legal aid. A staff operation permits monitoring and predictions of cost. If caseloads are maintained there is no apparent cost reason for the Legal Services Society to choose one mode of delivery over the other. As noted in the effectiveness summary, there were differences in how cases were handled by the judicare and public defence counsel. Public defence counsel clients were given terms of imprisonment less frequently than judicare clients. If correctional costs are considered, the public defence counsel mode is much less expensive. For every 1000 legal aid cases, the correctional saving produced by reduced incarceration costs could be over \$200,000.

Summary of Client Satisfaction

Clients of public defenders and judicare lawyers were both reasonably well satisfied with the performance of their lawyers. Neither mode of delivering legal aid presented

major problems in client satisfaction. If anything, clients of public defence lawyers were marginally more satisfied with the services they received.

Summary of Time/Tariff Analysis

The average time spent on a case by a public defender was 5 hours and 40 minutes. The average time spent by judicare counsel was around 7 hours. The major component of time spent was time travelling to, waiting at, and appearing in court. About 4 hours were spent in court-related activities by judicare counsel per case. About 1 hour was spent with clients; little time was spent in preparation or doing research.

The equivalent hourly rate (tariff payment/time spent) received by judicare counsel was \$34 per hour under the 1980 tariff. Lawyers received approximately the same equivalent hourly rate for major tariff services. Cases which ended by clients' "failure to appear", guilty pleas, stays and by trials were paid at the same equivalent hourly rate.

Summary of Public Defence/Court Relationships

It was generally felt by judges and Crown counsel in Burnaby that the presence of public defence counsel in the court improved the quality of justice for legal aid clients. Crown, in particular, felt that the presence of public defence counsel made their job easier. Both Crown counsel and the judges felt free to call upon public defence counsel to perform "on the spot" legal services for individuals. They saw them as part of the court system and their general availability as a major strength of a public defence office.

Public defence counsel felt that Crown was willing to give them good "deals" for their clients, better than the "deals" given for clients of judicare counsel. Crown, defence and judges all believed that this improved ability to communicate and obtain good sentences was the result of defence counsel being present in the court regularly, not the fact that the public defenders were staff counsel. However, during the course of the experimental operation of the office, Crown became aware of the fact that private counsel were not present in court as frequently as public defence counsel, so that a close working relationship could not develop with private counsel.

The public defence counsel, while acknowledging that Crown made them offers which were very good for their clients, gave the impression that they did not like the feeling that Crown or judges would call upon them for special services such as stand-in representation in court or impromptu discussions with accused persons. The pattern of open accessibility of the public defenders whenever in court which Crown and the judges liked was not uniformly liked by the public defenders.

Public defence counsel, if they are to remain independent, must have their independence continually reinforced by the Legal Services Society and must learn ways to limit their accessibility for general, non-duty counsel, court representation services. Under the current arrangements, it was generally agreed that the quality of defence had greatly improved, but that public defence counsel are likely to burn out rapidly.

Summary of Distributional Impact Analysis

It would be possible to set up several small public defence offices in the Province without having a major impact on the private criminal bar. There are about 1,000 lawyers in British Columbia who accept criminal legal aid cases. Most of these, however, handle only a few cases at a time. Only six lawyers in the whole province average as many criminal legal aid cases as staff counsel did in Burnaby. Only 1.4% handle more than 12 cases per month, and only 21% handled more than 1 case per month.

Small criminal legal aid offices could be set up in 10 communities in British Columbia without any substantial economic impact on the practices of most lawyers. A ten lawyer office could be set up in Vancouver without much impact on the criminal bar.

Overall Summary

The evaluation study found that:

- Public defence offices can be introduced in the Province in a limited way without disrupting the practice of most lawyers;

- Clients were generally well pleased with both public defence representation and judicare representation;
- Court personnel in Burnaby were well pleased with what was viewed as an improvement in the quality of justice in the court after the introduction of public defence counsel;
- The type of representation provided by public defence counsel differed from the type provided by judicare counsel;
- Under a public defence mode there were more guilty pleas and fewer trials. The overall guilty rates, (found guilty plus plead guilty) however, were similar, but clients of public defence counsel received fewer jail terms than judicare clients; and
- Under the fee for service tariff in operation at the end of the experimental period judicare lawyers received an effective rate of \$34 per hour. The tariff was increased after the experimental project ended.

A public defence mode for delivering legal aid within the Province could be introduced in a limited way. It would likely improve both judges' and Crown counsels' perception of the quality of defence representation in court. Based on the experience in Burnaby, clients would not be dissatisfied.

The introduction of a public defence mode of criminal legal services, however, would produce more negotiated justice and fewer trials. It would also most likely produce fewer jail sentences for those convicted.

Maintaining the cost-effectiveness of offices would require monitoring of caseloads and maintenance of minimum workloads. Small offices would rapidly become cost inefficient if workloads were not maintained. With a public defence system, the performance of staff counsel would also have to be monitored. With a more limited number of lawyers providing criminal legal aid, the presence of a staff lawyer

who received worse outcomes for his clients than other staff would have a more profound impact on criminal representation.

The introduction of a public defence office in Burnaby was seen as an improvement in justice by court personnel, including Crown counsel and judges. The introduction of criminal legal aid offices in other parts of the Province, if done within a more general judicare system and operated with the necessary monitoring, should improve the quality of justice generally.

TARIFF ANALYSIS

1. Summary of Tariff Analysis

Data gathered in the evaluation of the public defence operation in Burnaby were used to develop preliminary time norms for criminal legal aid representation, to analyse the existing British Columbia tariff and to explore, generally, the costs of other generic tariff structures.

1.1. Time Norms.

The average total time spent on a criminal legal aid case in Vancouver was 7 hours. Of this time over 4 hours was court time, including travel time, time waiting at court, and time appearing in court. Judicare counsel averaged around 1 hour and 20 minutes with clients, under 30 minutes in legal research and about 25 minutes in preparation of submissions and examination of witnesses. The remainder of the time was spent on a variety of administrative and legal duties. Court time dominated total case time. Preparation and legal research took relatively little time.

The current tariff in British Columbia was analyzed to determine the equivalent hourly rate earned by judicare lawyers. The average payment was divided by the average number of hours per case, to compute an equivalent hourly rate. Across all cases and procedures in 1980, judicare lawyers were paid at a rate of \$34 per hour.

1.2. Tariff Analysis.

The time norm analysis was used to explore four generic types of tariffs:

- Block service tariffs;
- Time tariffs;
- Seriousness tariffs;
- Experience tariffs.

1.3. Block Service Tariff.

A block service tariff pays lawyers for major services delivered. It pays for trials, guilty pleas, stays and other services in blocks. A trial block payment covers the trial and all appearances, meetings, research and preparation which lead up to the trial. Similarly guilty plea, stay, and other major block service fees cover all appearances and all preparation time. The British Columbia tariff is basically a block tariff. It pays for major block services, but makes some adjustments for the number of appearances in a case if the number is exceptionally high.

Equivalent hourly rates were calculated for the major billable categories of cases which ended in stays, guilty pleas, trials, or with the client failing to appear. The equivalent hourly rates for these categories were quite similar. The rates did not vary much from category to category. The tariff structure in British Columbia does not, basically, pay more for any one type of legal aid service than any other.

1.4. Time Tariff.

All tariff structures implicitly or explicitly attempt to pay for time spent. A time tariff structure explicitly links time spent with fees by paying for billed hours, not services. Based on the average time spent by lawyers on cases, projections were made about the per case costs of time tariffs based on different hourly rates.

At an hourly rate of \$30 and the Vancouver average of 7 hours per case, the average billing would be \$210. This is close to the actual average billing. At an hourly rate of \$50, the billing would be \$350 or \$140 more per case. If the hourly rate were increased to \$70, the average billing would be \$490.

1.5. Seriousness Tariff.

Seriousness tariffs are modifications of block tariffs where fees are higher for more serious offences. It is assumed that more time is spent on more serious offences and, consequently, the fee for services rendered on serious cases should be higher. The time norm analysis supported this assumption. More time was spent by lawyers on violent offences and less time on property and other offences. About 12.5 hours were spent on violent offences in Vancouver. Four and one-half to 5.5 hours were spent on the other types of offences. There is justification for paying more for serious offences.

1.6. Experience Tariff.

Experience tariffs pay differential fees based on the experience of counsel. More is paid to more experienced counsel. It is assumed that more experienced counsel leave the legal aid field because of the low rate of return on their time, and that increased fees would keep more of the experienced lawyers in the pool of available legal aid counsel.

In Vancouver, it was found that more experienced counsel averaged a higher total case time than less experienced lawyers. The break point between high experience and low experience was set at 4 years practice of criminal law. More experienced counsel spent, on average, 2 hours more per case than less experienced counsel. The more experienced lawyers, while having the same rate of trials as less experienced lawyers, averaged 1 hour more in court time than less experienced lawyers. The more experienced lawyers also spent more time preparing for court.

With a block tariff structure, more experienced lawyers are paid a lower equivalent hourly rate than less experienced lawyers for handling similar cases. The British Columbia tariff has a built in economic disincentive for experienced lawyers given current practice patterns.

2. Introduction

The primary goal of the evaluation was determining the relative effectiveness of the public defence mode of delivering legal aid compared with legal aid delivery by paying private lawyers under a tariff. The evaluation design, however, made it possible to look at the tariff structures used to define the conditions of payment in a judicare legal aid system. Time spent by counsel in

providing legal services was compared with actual services provided to determine whether the existing British Columbia tariff is a balanced, reasonable, means of paying lawyers for services.

The amount of time spent by judicare and public defence counsel on various legal defence activities, and the total amount of time spent on a case, were identified for cases which included various types of offences, and various legal outcomes. Comparisons were made across three groups of lawyers: Burnaby judicare counsel; Vancouver judicare counsel; and Burnaby public defence counsel.

Using observed times for various defence activities, for various types of offences, and for various outcomes, four model tariff structures for case-by-case payment were proposed. These models were then used to explore the trade-offs in costs to legal aid and income to lawyers. The four models were:

- payment according to time spent;
- payment according to legal defence service rendered;
- payment according to type of offence; and
- payment according to counsel's professional experience.

The first section of the tariff analysis discusses the general characteristics of the four tariff structures. The tariff formulation used in British Columbia is then described. Next, the results of the time/activity analysis are presented, and finally, the alternative tariff formulations are discussed.

3. Types of Tariffs

A time tariff simply pays counsel according to the amount of time spent on a case. In its purest form, such a formulation makes no assumptions about expected time per activity, but rather pays counsel a fixed amount for each hour billed.

Fee for service payment schedules define the payment appropriate for blocks of services. Blocks of services cluster some primary legal defence activity, such as representation at trial or guilty plea, and secondary

activities such as consultation with clients and preparation time which are necessary to perform the primary activity. In this payment approach, secondary legal defence activities are not separately billable. A certain amount of the block service payment is expected to account for these secondary activities. A differential fee schedule for various blocks of services reflects an expectation that some clusters of legal services, such as trials, require more time for primary and secondary activities than do others.

Tariff schedules can be formulated according to the seriousness of offences within a case. It is assumed (and occasionally empirically demonstrated), that more serious offences require more activity on the part of defence counsel and so warrant higher payments. Legal procedures are usually more involved for more serious offences. More serious offences are prosecuted in higher courts, and case processing in higher courts is more elaborate and therefore slower. Trials of serious offences involve more evidence. Juries are more frequently used. When convictions occur, judges more often order pre-sentence investigations. Higher payments for serious offences represent indirect payment for increased lawyer time.

Tariffs can be varied according to the degree of counsel's professional experience. Tariffs which pay differential fees according to counsel's experience are designed to keep more experienced lawyers within the legal aid system. Under these tariffs, it is assumed that more experienced lawyers provide superior legal defence, and that their talents should be available to clients of legal aid services. Certain assumptions, which are generally not tested, are used to justify experience differential tariffs. It is assumed that: 1) legal aid primarily attracts lawyers who are recently admitted to the bar; 2) lawyers with more experience tend to decrease their legal aid case load, increasing their proportion of higher paying non-legal aid cases; and 3) lawyers with more experience can attract more non-legal aid cases and have a higher income than lawyers who do not take non-legal aid cases. Experience tariffs are designed to produce an economic incentive that will keep experienced lawyers in the legal aid delivery network.

Experience tariff schedules can be used in conjunction with either time or block service tariffs. More experienced counsel can be paid higher fees for blocks of services, or can be paid more for the time they spend on a case.

4. The British Columbia Legal Services Tariff

Lawyers in private practice who represent legal aid clients in British Columbia are paid under a modified block service tariff. The tariff schedule defines fees for specific groups of services which a lawyer might provide for a client of criminal legal aid. Lawyers are paid for major services such as trials or guilty pleas. Individual meetings with clients, legal research, court appearances to fix court dates, are not billable services, but rather are considered sub-services, or expected parts, of major services. The full tariff appears in Table 4.1.

The block tariff schedule used in British Columbia pays different fees for the same defence service performed at different levels in the judicare system. Lower fees are paid for work in the Provincial Court, higher fees for work in County Court and Supreme Court.

Table 4.1
Legal Services Tariff of Fees, 1980

Guilty Plea	\$ 85.
Trial at Provincial Court	\$180.
Preliminary hearing	\$180.
-each additional hearing	\$120.
Jury trials before the Supreme or County Court of B.C.	\$230.
-each additional day	\$180.
Bail-Supreme or review by County Court	\$120.
Bail Provincial Court	\$ 85.
Stay	\$120.
Adjourned	\$ 25.
Appeals	\$295.
-each additional day	\$180.
Court of Appeal on Sentence	\$120.
-each additional day	\$ 60.
Stated Case	\$180.
Appeal Interviews	\$ 30.
Extraordinary Remedies	\$230.
Supreme Court of Canada	\$350.
-subsequent days	\$230.
Transfer Application in Juvenile Court	\$120.
Visits for Penal Institution	\$ 25.
Written Argument	\$ 85.

5. Time/Activity Analysis

In order to discuss the current tariff and possible future tariff modifications, it was necessary to determine how much time defence counsel spent on defence activities for various types of cases. Judicare and public defence counsel participating in the evaluation of the Burnaby Criminal Defence Project completed activity logs for many cases included in the study. Eight hundred and ninety-three logs were collected. The logs were ongoing, event-entry logs, designed to be attached to a file. Information was collected about several classes of activities:

- Court appearances;
- preparation time; and
- Case administration.

Court appearance time was actually composed of three types of activities:

- Travel time to and from court;
- Waiting time at court; and
- Actual time spent before the court.

Private judicare counsel found it difficult to produce separate time log entries for the three types of court related activity, and did not do so.

Preparation time was subdivided into four activities:

- Time with client;
- Legal research time;
- Preparation for examination of witnesses and of submissions;
- Other time such as phone calls, and writing letters.

Case administration was divided into three activities:

- Time spent on legal aid referral form;
- Time spent on evaluation study forms;

- Other administrative activities.

A category for evaluation related time was included. This category covered the time spent on evaluation study forms. It was included so it could be subtracted from the total time on a case, giving a better estimate of time spent outside the study.

The time and activity data collected for public defence and judicare counsel were used to make three major time estimates:

- Time per case and per activity for Burnaby public defence counsel;
- Time per case and per activity for judicare counsel acting in the Burnaby court; and
- Time per case and per activity for judicare counsel acting in the Vancouver court.

6. General Statistical Considerations

In interpreting the results that follow, it is important to make a distinction between average times which, in absolute numbers, are different and average times which are statistically different. There was substantial variation in time spent on individual cases. All three groups of lawyers, Public Defenders, Burnaby judicare lawyers, and Vancouver judicare lawyers, had some cases which took many hours and others which took little time. Because of this variation in the work time reported from case to case, it is important to view the average times presented here as estimates, not absolute figures. Differences of, say, five hours and five hours and fifteen minutes mean little. Only large differences should be considered important. Statistical tests were used to identify important patterns from the case information. These tests are reported in the technical appendix. Only substantiated patterns are discussed in the body of the report.

7. Total Case Times and Time per Activity for All Cases

For each defence type the total amount of time spent on a case, and the time spent on each activity, were averaged over all cases included in the study. In addition to average times, the time spent on each activity was expressed as a percent of total case time. This was done to help describe how each defence type allocated time amongst the various case activities. Total case times, time spent on each activity, and percentage allocation of total case time amongst various activities were compared between public defence counsel and judicare counsel in Burnaby and Vancouver. The times and percentages are presented in Table 7.1.

Table 7.1

Average Total Case Time

	Burnaby Judicare	Vancouver Judicare	Burnaby Public Defence
Case Time (Hours: Min.)	7:46	6:55	5:36

8. Total Case Time for All Cases

Burnaby judicare counsel averaged the longest amount of time per case; around 7 hours and 46 minutes. Vancouver judicare counsel averaged less time on a case than did Burnaby judicare, but spent more time than did the Burnaby public defence counsel. Vancouver judicare counsel averaged around 7 hours on each case. The Burnaby public defence counsel reported the lowest average time per case; 5 hours and 36 minutes.

Burnaby judicare counsel averaged about 2 hours longer per case than did the public defence counsel. Vancouver judicare counsel averaged about 1 hour and 20 minutes longer per case than did public defence counsel. Public defence counsel total time was the lowest of the 3 groups and substantially different from judicare counsel.

9. Time per Activity for All Cases

9.1 Court Time.

Court time made up a large proportion of total case time. Burnaby judicare counsel spent the largest amount of time on court related activities; 5 hours and 25 minutes. Vancouver judicare counsel spent less time on court activities than did Burnaby judicare counsel, but spent more time than did the public defence counsel. Vancouver judicare counsel spent over 4 hours on court activities. Burnaby public defence counsel reported the lowest average court time, around 2 hours.

Burnaby judicare counsel spent over 3 hours longer on court activities than did the public defence counsel. Vancouver judicare counsel spent almost 2 hours longer on court activities than did the public defence counsel.

For Burnaby judicare counsel 70% of total case time was spent on court activities. Vancouver judicare counsel spent 60% of total case time on court activities. While Burnaby public defence counsel only averaged 39% of total case time to court activities.

The activity logs included several court related activities within the general category of court time. Court time included time spent travelling to and from court, time spent waiting at court, and actual appearance time. It was not possible to get judicare counsel to disaggregate their court related activity time into sub-categories. To explain the differences in court related time it is necessary to look at other patterns.

The Burnaby public defence counsel spent very little time commuting to court. The Burnaby Provincial Court was located within easy walking distance (under half a kilometer) of the Burnaby Legal Services Office. The offices of the judicare counsel acting in Burnaby generally were located in Vancouver, so they most likely spent a much longer time travelling to Burnaby Provincial court to handle cases. The combined court time and travel time which Burnaby judicare counsel reported, 3 hours longer than the public defence counsel court time and travel time, is in part explained by longer distances to court.

Judicare counsel who handled cases in Vancouver were also generally located in Vancouver. In fact the overlap between the legal aid bar acting in Burnaby and Vancouver is

very high.

Office location accounts for a proportion of the time spent on a case. Offices located near the court where most cases are heard provides a distinct time advantage. The public defence counsel in Burnaby did not spend time commuting, and consequently had a structural advantage in reducing court time.

Commuting time, however, does not provide a total explanation for different court times. Vancouver Provincial Court is a much more crowded court than the Burnaby Provincial Court. The 2 hour longer court time for Vancouver judicare counsel than for public defence counsel in part reflects longer waiting time in the crowded urban court.

9.2 Client Interviewing Time.

There was much less variation between the three lawyer groups for client interviewing time than there was for court time. Vancouver judicare, rather than Burnaby judicare counsel, reported the highest time per activity. Vancouver judicare counsel spent 1 hour and 23 minutes on client interviews, Burnaby judicare counsel spent 1 hour and 12 minutes, and Burnaby public defence counsel spent 1 hour and 6 minutes on client interviews. Effectively, there was no difference between public defence counsel and judicare counsel in Burnaby and only a small difference between Burnaby and Vancouver.

Vancouver judicare and the public defence counsel allocated the same proportion of total case time to client interviews. They spent 20% of their total time per case interviewing clients. Burnaby judicare counsel allocated 15% of total case time to client interviews; only marginally less than the other 2 defence types.

9.3 Legal Research Time.

Vancouver judicare counsel averaged 28 minutes on legal research, Burnaby judicare counsel averaged 22 minutes, and public defence counsel spent 16 minutes on legal research. The differences are a matter of a few minutes.

All three lawyer groups spent approximately the same proportion of total case time on legal research. Vancouver judicare counsel allocated 7% of total case time to legal research, Burnaby judicare and public defence counsel allocated 5% of total case time to legal research.

TABLE 9.1
Total Time by Activity

	Burnaby Judicare	Vancouver Judicare	Burnaby Public Defence	Burnaby Judicare	Vancouver Judicare	Burnaby Public Defence
	Hours : Minutes			%		
Court	5:25	4:07	2:13	70	60	39
Client	1:12	1:23	1:06	15	20	20
Legal Research	0:22	0:28	0:16	5	7	5
Preparation Witnesses and Submission	0:25	0:27	1:40	5	6	30
Other Preparation	<u>0:22</u>	<u>0:30</u>	<u>0:21</u>	<u>5</u>	<u>7</u>	<u>6</u>
TOTAL Case Time	7:46	6:55	5:36	100%	100%	100%

Legal research is a minor activity for a criminal legal aid lawyer. This should not be surprising. Given the large number of criminal cases handled in the courts, the relative number of them which present legal research problems are small, particularly for those lawyers who frequently handle criminal cases in Provincial Courts.

9.4 Time for Preparation of Submissions and Examination of Witnesses.

Judicare counsel acting in both Vancouver and Burnaby spend the same amount of time on preparation of submissions and examination of witnesses. Both Vancouver and Burnaby judicare counsel spent approximately 25 minutes on preparation of submissions and examination of witnesses. Both allocated about 5-6% of total case time to this activity.

In contrast, the public defence counsel allocated 30% of total case time to preparation of submissions and examination of witnesses. Burnaby public defence counsel averaged 1 hour and 40 minutes on preparation of submissions and examination of witnesses. This is 1 hour and 15 minutes longer than judicare counsel. The difference between judicare and public defence counsel in terms of percentage allocation of time and duration of time spent on preparation of submissions and examination of witnesses is striking in part because the three lawyer groups had been so similar in times and allocations for client interviews and legal research. It was observed, however, that one public defence counsel in particular spent very long periods of time on preparation of submissions and examination of witnesses. The differences between judicare counsel and public defence counsel are attributable primarily to one staff counsel.

It is interesting to note that preparation of submissions and examination of witnesses is the only case activity on which the Burnaby public defence counsel spent more time than the judicare counsel. Even though the public defence counsel spent 1 hour and 15 minutes longer on such preparations, their total time was substantially lower than judicare total case time.

9.5 Other Case Preparation Time.

Judicare lawyers and public defence lawyers did not spend substantially different amounts of time on other case preparation activities such as writing letters or making telephone calls. Vancouver judicare counsel spent 30 minutes on other case preparation, which is only slightly

more than the Burnaby counsel. Burnaby judicare counsel spent 22 minutes on other case preparation. Burnaby public defence counsel spent 21 minutes on other case preparation.

As in client interviewing and legal research time allocations, judicare and public defence counsel allocated approximately the same proportion of total case time to other case preparation. Vancouver judicare allocated 7% of total case time to other preparation. Burnaby judicare counsel spent 5% of total case time on other case preparation. The Burnaby public defence counsel allocated 6% of total case time to other case preparation.

9.6 Other Clients Represented.

Judicare counsel and public defence counsel mostly make trips to court for only one client or for one case at a time. There were few court appearances at which counsel represented more than one client. Across all of the cases under analysis, on an average, less than one time in five was the lawyer representing two clients when he or she went to court. The case times reported by a lawyer for any one case overlap little with case times reported for any other case.

9.7 Relationship between Time per Activity and Total Case Time.

The amount of time spent on each of the various case activities was compared to total case time to determine which case activities most influence total case time.

Burnaby judicare counsel reported a total case time, averaged over all types of cases, of 7 hours and 46 minutes. Vancouver judicare counsel averaged 6 hours and 55 minutes per case. Burnaby public defence counsel reported the lowest average case time; 5 hours and 36 minutes. Burnaby judicare counsel total case time was about 2 hours longer than public defence counsel total case time. Vancouver judicare counsel total case time was 1 hour and 20 minutes longer than public defence counsel. Burnaby judicare counsel total case time was 51 minutes longer than Vancouver judicare.

Even though Burnaby judicare counsel reported a higher total case time than Vancouver judicare counsel, Vancouver judicare counsel spent longer on every case activity, except related court activities than did Burnaby judicare counsel. In total, Vancouver judicare counsel averaged 27 minutes more per case on the combined activities of client

interviewing, legal research, preparation of submissions and examination of witnesses, and other case preparation than did the Burnaby judicare counsel. Court activity was the only activity for which the Burnaby judicare counsel reported a higher time per case than the Vancouver judicare counsel. Burnaby judicare counsel court time was 1 hour and 18 minutes longer than Vancouver judicare counsel court time. The fact that court time is the only time per activity which increased along with total case time between Vancouver judicare cases and Burnaby judicare cases suggests that court time is more directly related to total case time than is the time spent on any other activity.

Total case time increases with increased percentage of total case time to court. Burnaby public defence counsel with the lowest total case time, allocated the lowest proportion of total case time to court. Public defence counsel spent approximately 40% of total case time on court activities. Vancouver judicare counsel, with total case time falling between Burnaby public defender and Burnaby judicare counsel spent approximately 60% of case time to court activities. Burnaby judicare counsel reported the highest total case time, and had the highest proportion in court time, 70%.

The dominance of related court time in total case time is extremely important in considering tariff payments. Time travelling to court and waiting in court is generally not under the control of counsel. Individual counsel may locate their offices near the courts in which they most frequently act. The possibility of locating near the court is an economically bounded choice. Lawyers near the court spend less time in court and proportionally considerably less total case time than lawyers located away from court. For lawyers close to court the fee for service tariff payments represent a relatively higher return on their time investment in criminal legal aid cases than those lawyers located away from the court.

Similarly, those lawyers acting in a busier urban court generally receive a lower return on their time investment than do lawyers located near and acting in less crowded courts when both lawyers are paid under a fee for service structure.

9.8 Summary of Case Times.

Total case time increased between the three defence types in the order of Burnaby public defence counsel, Vancouver judicare counsel, and Burnaby judicare counsel.

Public defence counsel averaged 5 hours and 36 minutes on a case, Vancouver judicare counsel averaged 6 hours and 55 minutes and Burnaby judicare counsel spent 7 hours and 46 minutes on a case. All three lawyer groups spent approximately the same amount of time, and allocated the same proportion of total case time, to client interviews, legal research, and other case preparation.

Client interviews occupied approximately 17% of total case time, between 1 hour and 6 minutes and 1 hour and 23 minutes. Legal research occupied 5% of total case time, between 16 and 28 minutes. Other case preparation occupied between 21 and 30 minutes, which was approximately 6% of total case time for all three lawyer groups.

The three lawyer groups spent different amounts of time, and allocated time differently, only for court activities and preparation of submissions and examination of witnesses. Burnaby public defence counsel averaged 40% of total case time, or 2 hours and 13 minutes on court activities. Vancouver judicare counsel spent 60% of total case time, (4 hours and 7 minutes) on court activities. Burnaby judicare counsel spent 70% of total case time, or 5 hours and 25 minutes on court activities.

Burnaby public defence counsel spent more time on preparation of submissions and examination of witnesses than did judicare counsel. This difference could be tied back to one staff defence counsel's pattern of preparing cases.

These time allocations and activity times are averages for the three lawyer groups across many cases. Cases differ in administrative complexity, having different numbers of counts, charges, and informations, they differ in seriousness of offence; and cases can be stayed, plead guilty, or go to trial. Defence counsel would be expected to spend different amounts of time per activity, and different total case times depending upon the type of case.

The next section of the report examines time spent by the different groups of defence counsel for different types of cases.

10. Administrative Complexity Analysis

Cases which come before the court vary along many dimensions. One way cases vary, which is often reflected in tariffs, is by administrative complexity. Some cases

consist of just one charge. These cases are relatively simple administratively, both for defence counsel and for the court. There is only one set of facts; only one charge to be heard in court. Cases with multiple counts of one charge, such as breaking and entry, represent another potential level of administrative complexity. Multiple fact sets may have to be brought forward in court. The different counts may end up being treated differently in court. Multiple charge and multiple information cases present still other levels of administrative complexity. Multiple charges may require multiple groups of witnesses, multiple submissions of evidence, and result in divergent outcomes. Multiple information cases present all the potential administrative and logistics problems of multiple charges in addition to which the informations may end up being handled in totally different court proceedings. The potential for problems occurring which might lengthen court processing or compound the work done by defence counsel would seem to increase as the administrative complexity of a case moves from one charge, to multiple counts of one charge, to multiple charges, and finally to multiple informations.

The tariff structure in British Columbia implicitly uses concepts of administrative complexity. If a lawyer prepares separately for separate informations then he or she can bill for two proceedings. If the informations are handled in one proceeding, counsel is supposed to bill for only one service under the tariff.

Administrative complexity should not be confused with legal complexity. A case may be legally complex if there are issues of law, procedure or evidence which are problematic. A case may be administratively simple, say one charge, but legally complex. It may involve only one set of facts, but bringing these facts into court may present problems under the rules of evidence. Conversely, a case may be administratively complex, with many informations and many witnesses, but legally straightforward. Cases may also be concurrently administratively and legally complex.

In criminal legal aid work which involves cases primarily heard in Provincial courts, the degree of legal complexity is slight: little time is spent on legal research; court time dominates the total amount of time a case takes.

The evaluation explored administrative complexity. If time spent on cases is related to the administrative complexity of a case, then administrative complexity can easily be built into a tariff.

TABLE 10.1
Time by Administrative Complexity

	Simple Cases	Complex Cases	Multiple Counts Cases	Multiple Charges Cases	Multiple Informs Cases
	Hours : Minutes				
Vancouver Judicare					
Court	4:03	4:12	3:52	4:08	4:18
Client	1:22	1:25	1:15	1:24	1:27
Legal Research	0:23	0:33	0:46	0:41	0:25
Preparation Witnesses and Submission	0:27	0:28	0:19	0:36	0:22
Other Preparation	0:24	0:36	0:51	0:37	0:34
TOTAL Case Time	6:39	7:14	7:03	7:26	7:06
Burnaby Judicare					
Court	5:05	5:51	3:46	5:14	7:21
Client	1:00	1:24	0:48	1:03	2:11
Legal Research	0:25	0:19	0:19	0:28	0:03
Preparation Witnesses and Submission	0:25	0:25	0:00	0:30	0:19
Other Preparation	0:23	0:22	0:11	0:22	0:25
TOTAL Case Time	7:18	8:21	5:04	7:37	10:19
Burnaby Public Defence					
Court	2:23	2:03	1:48	1:59	2:37
Client	1:00	1:13	1:16	1:10	1:28
Legal Research	0:18	0:16	0:22	0:13	0:26
Preparation Witnesses and Submission	1:42	1:39	0:50	1:43	1:43
Other Preparation	0:22	0:20	0:12	0:19	0:28
TOTAL Case Time	5:45	5:31	4:28	5:24	6:42

Cases were divided into four categories:

- Single charges on single informations or indictments;
- Multiple counts or multiple occurrences of one type of offence;
- Multiple charges on one information or indictment;
- Multiple informations or indictments with one or more charges on two or more informations or indictments.

These categories are nested. Multiple information cases obviously are multiple charge cases, but not all multiple charge cases involve more than one information. Multiple charge cases may contain multiple counts on a charge, but not all multiple charge cases contain multiple count charges.

The time spent by public defence counsel and judicare counsel on single charge; multiple count; multiple charge; and multiple information cases compared. Single charge cases were considered administratively simple cases. Multiple count, multiple charge and multiple information cases were considered administratively complex.

10.1 Time by Administrative Complexity.

Both Vancouver and Burnaby judicare counsel spent longer on administratively complex cases than on simple cases. The Burnaby public defence counsel did not spend longer on administratively complex cases than on simple cases.

Judicare counsel did not change the proportion of total time allocated to various activities between simple and complex cases. The greater total case time for complex cases was simply a result of increased time spent on each case activity, rather than a selective increase in certain activities. Public defence counsel also allocated their time similarly for complex and simple cases.

Vancouver judicare counsel averaged approximately the same amount of time on all types of complex cases, whether they were multiple counts, multiple charges, or multiple informations. Both Burnaby judicare and Burnaby public defence counsel spent increasing amounts of time on the

three types of complex cases. For both types of counsel acting in the Burnaby court, total case times increased in the order: multiple counts, multiple charges, and multiple informations. The public defence counsel, however, averaged less time for multiple count cases than for simple cases and the same time for multiple cases as for simple cases.

For Burnaby judicare counsel, multiple charge cases averaged about 2.5 hours longer than multiple counts cases. Multiple informations cases took 5 hours and 15 minutes longer than multiple count cases, and 2 hours and 42 minutes longer than multiple charges cases. Burnaby public defence counsel spent 56 minutes longer on multiple charges cases than on multiple counts cases. Multiple information cases took approximately 2 hours and 15 minutes longer than multiple counts cases, and 1 hour and 18 minutes longer than multiple charges cases.

Burnaby judicare and public defence counsel both experienced increased total case times with increased administrative complexity. For both modes of delivering legal aid in Burnaby, time in court also increased. As noted before, judicare counsel spend longer time in travelling to court, waiting at court, and in court than public defence counsel. The judicare average case increase in court time is, therefore, more pronounced than the increase for public defence counsel cases. Burnaby judicare counsel averaged over 7 hours in court time alone for multiple information cases and less than 4 hours for multiple count cases. Public defence time ranged from 2 hours and 37 minutes for multiple information cases to only 1 hour and 48 minutes for multiple count cases. Time with clients also increased for judicare counsel. Otherwise there was no consistent pattern of allocation of time.

Burnaby public defence counsel reported the lowest total case times of all three categories of defence lawyers. Averages for simple, complex, multiple counts, multiple charges, and multiple informations cases were lower for public defence counsel. The smaller total case time for public defence counsel was primarily related to differences in time spent on court activities and preparation of submissions and examination of witnesses.

Most difference between defence types in total case time for different case complexities was related to differences in court activity time and time spent preparing submissions and examining witnesses. For all kinds of administratively complex cases, Burnaby public defence counsel continued to spend the lowest portion of total case

time on court activities and continued to allocate the highest portion of time to preparation of submissions and examination of witnesses.

11. Tariff Category Analysis

At present, judicare lawyers handling cases for the Legal Services Society are paid under a fee for service schedule. Counsel are paid for services rendered. Services are categorized in a procedural outcome sense. For example, one fee is paid for cases which end with a failure to appear. A different fee is paid for cases which end in guilty plea. Still other fees are paid for stays and trials.

The average lawyer times per case for judicare cases heard in Burnaby and Vancouver and average times for public defence counsel cases were compared for several types of outcomes which conform to tariff categories (see Table 11.1). Times were calculated and compared for cases which ended in:

- Failures to appear;
- Guilty pleas;
- Stays or withdrawals;
- Trials.

11.1 Failure to Appear (FTA's) Times.

As would be expected all three lawyer groups averaged the lowest total case times on cases which resulted in failures to appear (FTA's) by clients and the highest total case times on cases which went to trial.

Burnaby public defence counsel averaged the lowest total time for FTA's, 2 hours and 43 minutes. Burnaby judicare counsel averaged the next lowest amount of time, 3 hours and 23 minutes followed by Vancouver judicare counsel who spent 4 hours and 27 minutes. Total case time for failure to appear cases increased in the order; Burnaby public defence counsel; Burnaby judicare counsel; and Vancouver judicare counsel.

All three of the defence types spent the bulk of their time in their FTA cases on court activities. When a client fails to appear at court the lawyer has already gotten to

TABLE 11.1
Time Spent by Tariff Category

	Time by Tariff Category				Proportional Time			
	FTA	Stay	G.P.	Trial	FTA	Stay	G.P.	Trial
	Time (Hours:Minutes)				%	%	%	%
<hr/>								
Vancouver Judicare								
Court	2:47	3:28	3:18	5:43	63	55	58	63
Client	0:38	1:24	1:15	1:42	14	22	22	19
Legal Research	0:22	0:26	0:21	0:37	8	7	6	7
Preparation Witnesses and Submission	0:18	0:22	0:31	0:22	7	6	5	7
Other Preparation	0:22	0:39	0:31	0:22	8	10	9	4
	4:27	6:19	5:43	9:07	100	100	100	100
Burnaby Judicare								
Court	2:28	4:28	4:22	7:53	73	68	70	73
Client	0:18	1:04	1:12	1:15	9	16	19	11
Legal Research	0:04	0:22	0:08	0:40	2	5	2	6
Preparation Witnesses and Submission	0:21	0:22	0:07	0:44	10	5	2	7
Other Preparation	0:12	0:20	0:26	0:19	6	5	7	3
Total Case Time	3:23	6:36	6:15	10:51	100	100	100	100
Burnaby Public Defence								
Court	1:01	1:42	1:51	4:04	38	37	40	42
Client	0:18	1:04	1:07	1:12	11	23	24	12
Legal Research	0:07	0:12	0:05	0:49	4	4	2	8
Preparation Witnesses and Submission	0:59	1:18	1:11	3:20	36	28	26	34
Other Preparation	0:18	0:23	0:21	0:21	11	8	8	4
Total Case Time	2:43	4:39	4:35	9:46	100	100	100	100

court and waited. Time relating to court activities dominates cases which result in a FTA as it does other cases.

11.2 Trial Times.

Burnaby judicare counsel spent the longest time on cases which went to trial; 10 hours and 51 minutes as indicated in Table 11.1. Burnaby public defence counsel spent longer than Vancouver judicare counsel on trial cases. Burnaby public defence counsel averaged 9 hours and 46 minutes on a trial case while Vancouver judicare averaged 9 hours and 7 minutes.

For cases going to trial, the three lawyer groups spend similar amounts of time on legal research and the residual case preparation category which included writing letters and making telephone calls. They averaged approximately 40 minutes on legal research, and 20 minutes on other case preparation. Vancouver judicare counsel spent 30 minutes more on client interviews than the other two defence types. The three lawyer groups differed most widely in court activity times, time spent on preparation of submissions, and examination of witnesses for trial cases.

In trial cases Vancouver judicare counsel averaged 30 minutes more interviewing clients and 1 hour and 40 minutes longer in court activity time than the Burnaby public defence counsel. Public defence counsel spent 3 hours and 20 minutes on preparation of submissions and examination of witnesses, so the public defence counsel total case time for trials was approximately 75 minutes longer than the total trial time for Vancouver judicare counsel.

Vancouver and Burnaby judicare counsel spent about the same amount of time on legal research, preparation of submissions and examination of witnesses, and other types of case preparation. Vancouver judicare counsel spent 30 minutes longer than Burnaby judicare counsel on client interviews, but Burnaby judicare counsel's spent 2 hours more on court time. Consequently, Burnaby judicare's total case time for trials was approximately 1 hour and 45 minutes more than Vancouver judicare.

11.3 Times for Stays and Guilty Pleas.

Vancouver judicare counsel spent 36 minutes longer on cases which were stayed than on cases in which clients plead guilty. Burnaby judicare counsel spent 21 minutes longer on cases which were stayed than on cases which were plead

guilty. Burnaby public defence counsel spent approximately the same amount of time on cases which were stayed and on cases which were plead guilty. Overall these differences are small. The average times for stays and guilty pleas were effectively the same.

As with the other categories of outcomes, court time was the largest component of total case time and court time was greater for judicare counsel both in Burnaby and Vancouver.

Burnaby judicare counsel reported the largest total case time of the three lawyer groups for both stayed and guilty plea cases. For stayed cases the Burnaby judicare counsel spent 6 hours and 36 minutes total case time, and 6 hours and 15 minutes for cases in which clients plead guilty. Vancouver judicare counsel reported intermediate case times for stays and guilty pleas; 6 hours and 19 minutes for stays and 5 hours and 43 minutes for cases plead guilty. The Burnaby public defence counsel spent the lowest total case times for both stayed cases and cases plead guilty. Public defence counsel spent approximately 4 hours and 35 minutes for both types of cases.

The major difference, for cases which were stayed and cases which were plead guilty, between the three lawyer groups, was the amount of time spent on court activities, preparation of submissions and examination of witnesses. With the exception of court activities, preparation of submissions, and examination of witnesses, Vancouver judicare counsel spent slightly more time on all case activities than the other two defence types for cases stayed and cases plead guilty. Vancouver judicare counsel spent less time in court for stays and guilty pleas than did Burnaby judicare counsel. For cases which were stayed and plead guilty, Burnaby judicare and public defence counsel spent approximately the same amount of time on all case activities except court time and time preparing submissions and examining witnesses. Public defence counsel spent much less time doing court work than the Burnaby judicare counsel. They spent close to one hour longer on preparation of submissions and examination of witnesses for both stays and guilty pleas than Burnaby judicare counsel.

11.4 Summary of Time by Tariff Category.

When average time for cases were calculated for four categories of outcomes (FTA's, guilty pleas, stays and trials), several interesting patterns appeared. As expected, less time was spent by counsel on cases which

ended in a failure to appear by the client than in a trial. Total time for trial cases averaged around 10 hours. However, the total amount of time spent by judicare counsel on cases which ended in a failure to appear was quite high, around 3.4 hours (Burnaby) and 4.5 hours (Vancouver). While the difference is relatively small (.9 vs. 1.7 hours) compared to the trial time, it is still quite large.

Total times for cases which ended in guilty pleas and stays or withdrawals were about the same. Court time and client time were about the same. Lawyers did spend marginally more time on stays and withdrawals than on guilty pleas.

In all outcome categories court time dominates. Court time, including travelling to and from court and waiting at court, accounted for 63% to 73% of total case time for judicare and 38 % for Public Defence. Time with clients made up another 10% to 20%. The remaining time was split across the other activities.

12. Offence Type Analysis

Offences were divided into six categories, violent, property, vice and drugs, escape, alcohol, and a residual category containing the remaining criminal code offences. The offences which make up these categories are listed in the technical Appendix. Total time per case and time per activity were compared for judicare and public defence counsel to determine whether or not they responded differently to different types of offence.

In general, the public defence counsel reported total case times either similar to or lower than judicare total case times for all types of offences. The judicare counsel generally spent much longer on court activities for all types of offences, but the public defence counsel spent much longer on preparation of submissions and examination of witnesses.

12.1 Time for Violent Offences.

As indicated in Table 12.1a,b,c, Vancouver judicare counsel and Burnaby public defence counsel averaged almost the same total case time for violent offences. The Vancouver judicare counsel averaged 12 hours and 15 minutes while public defence counsel averaged 12 hours and 05 minutes total case time for violent offences. For both

Vancouver judicare counsel and public defence counsel, violent offence cases took much longer than any other type of offence. Burnaby judicare counsel only averaged 5 hours and 36 minutes for total case time on violent offences, but there were not many violent offences handled by judicare counsel in Burnaby. Vancouver judicare counsel and Burnaby public defence counsel spent very different amounts of time on case preparation for violent offence cases. Public defence counsel averaged approximately 59 minutes on activities in the other case preparation category, and approximately 23 minutes on legal research. Vancouver judicare counsel spent 15 minutes less than the public defence counsel on client interviews. There were no real differences between judicare and public defence counsel on times spent with clients or on research. The major difference between the Burnaby public defence counsel and the Vancouver judicare counsel was in time spent on court activities and time spent on preparation of submissions and examination of witnesses. Burnaby public defence counsel averaged 5 hours and 4 minutes on court activities for violent offences, and 5 hours and 16 minutes on preparation of submissions and examination of witnesses. Vancouver judicare counsel spent 7 hours and 48 minutes on court activities, and less than 1 hour on preparation of submissions and examination of witnesses for violent offence cases. Burnaby judicare counsel spent less time on preparation of submissions and examination of witnesses than did the other two defence types.

The time spent preparing witnesses and submissions was small for judicare counsel in violent offences. Public defence counsel consistently spent more time preparing for cases than judicare counsel. This difference was most pronounced for cases involving violent offences.

In summary, for violent offences, there was much similarity between how cases were handled by Vancouver judicare lawyers and public defence counsel. The only major exception was time spent on preparation of submissions and examination of witnesses. As discussed earlier, this difference can be mostly attributed to one staff counsel who spent much more time than the other staff counsel on preparing for the examination of witnesses and preparing submissions.

12.2 Time for Property Offence Cases.

Vancouver judicare counsel and Burnaby public defence counsel averaged almost the same total case time on property offence cases. As shown in Table 12.1, Vancouver judicare counsel reported 5 hours and 25 minutes total case time, and

TABLE 12.1a
Time by Offence¹
VANCOUVER - Judicare

	Violent	Property	Vice/ Drugs	Escape	Alcohol	Other
	hours : minutes					
Court	7:48	3:21	2:21	2:15	3:55	3:29
Client	2:57	2:06	0:42	0:55	1:19	1:18
Legal Research	0:15	0:21	0:25	0:21	0:46	0:23
Preparation Witnesses and Submission	0:49	0:16	0:20	0:24	0:16	0:29
Other Preparation	<u>0:26</u>	<u>0:21</u>	<u>0:18</u>	<u>0:23</u>	<u>0:25</u>	<u>0:19</u>
TOTAL Case Time	12:15	5:25	4:06	4:18	6:41	5:58
	%	%	%	%	%	%
Court	64	62	57	52	59	58
Client	24	20	17	22	20	22
Legal Research	2	6	10	8	11	7
Preparation Witnesses and Submission	6	5	8	9	4	8
Other Preparation	4	6	8	9	6	5

¹Time calculated for single charge cases

TABLE 12.1b
Time by Offence¹
BURNABY - Judicare

	Violent	Property	Vice/ Drugs	Escape	Alcohol	Other
	hours : minutes					
Court	3:38	5:29	4:06	3:09	3:09	8:00
Client	1:18	0:49	0:35	1:00	0:19	1:05
Legal Research	0:20	0:21	0:11	0:34	0:09	1:01
Preparation Witnesses and Submission	0:10	0:33	0:21	0:18	0:09	1:05
Other Preparation	<u>0:10</u>	<u>0:23</u>	<u>0:10</u>	<u>0:10</u>	<u>0:38</u>	<u>0:09</u>
TOTAL Case Time	5:36	7:35	5:23	5:11	4:24	10:20
	%	%	%	%	%	%
Court	65	72	76	61	72	77
Client	23	11	11	19	8	11
Legal Research	6	5	3	11	3	10
Preparation Witnesses and Submission	3	7	7	6	3	1
Other Preparation	3	5	3	3	14	1

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¹Time calculated for single charge cases

TABLE 12.1c
Time by Offence¹
BURNABY - Public Defence

	Violent	Property	Vice/ Drugs	Escape	Alcohol	Other
	hours : minutes					
Court	5:04	2:18	1:12	1:42	1:52	2:29
Client	1:12	1:02	0:35	0:56	0:54	0:59
Legal Research	0:11	0:17	0:03	0:21	0:11	0:20
Preparation Witnesses and Submission	5:16	1:39	0:30	1:05	1:28	1:28
Other Preparation	<u>0:22</u>	<u>0:21</u>	<u>0:15</u>	<u>0:25</u>	<u>0:10</u>	<u>0:28</u>
TOTAL Case Time	12:05	5:37	2:35	4:29	4:35	5:44
	%	%	%	%	%	%
Court	42	41	46	38	41	43
Client	10	19	23	21	20	17
Legal Research	1	5	2	8	4	6
Preparation Witnesses and Submission	44	29	19	24	32	26
Other Preparation	3	6	6	10	9	38

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¹Time calculated for single charge cases

Burnaby public defence counsel reported 5 hours and 37 minutes total case time for property offences. Vancouver judicare counsel and public defence counsel spent approximately the same amount of time on client interviews, legal research, and other case preparation for property offence cases. They spent approximately 1 hour on client interviews, 19-20 minutes on legal research, and 21 minutes on other case preparation such as writing letters or making telephone calls.

The public defence counsel averaged 1 hour and 39 minutes on preparation of submissions and examination of witnesses, which was 1 hour and 23 minutes longer than the Vancouver judicare counsel. The Vancouver judicare counsel spent approximately 1 hour longer on court activities, so total case time for public defence counsel was only slightly longer than for Vancouver judicare counsel for property offences.

For property offences, Burnaby judicare counsel total case time averaged 7 hours and 35 minutes, approximately 2 hours longer than total case times reported by Vancouver judicare and Burnaby public defence counsel. Burnaby judicare counsel reported much longer court activity times than Burnaby judicare counsel. Burnaby judicare had several exceedingly long cases which increased their average court time.

12.3 Time for Vice and Drug Offences.

Total case times for vice and drug offences increased in the order: Burnaby public defence counsel; Vancouver judicare counsel; and Burnaby judicare counsel. Burnaby public defence counsel reported the lowest total case time, 2 hours and 35 minutes for vice and drug offences. Vancouver judicare counsel total case time for vice and drug offences averaged 4 hours and 06 minutes while for Burnaby judicare counsel it was 5 hours and 23 minutes.

All three lawyer groups spent approximately the same amount of time on client interviews, preparation of submissions and examination of witnesses, and other case preparation (40 minutes interviewing clients, 25 minutes preparing submissions and examining witnesses, and 15 minutes on other case preparation). Public defence counsel reported unusually low times for legal research. They averaged 3 minutes on legal research as compared to 11 minutes for Burnaby judicare counsel and 25 minutes for Vancouver judicare counsel.

The major difference between the three lawyer groups for vice and drug offences was in time spent on court activities. The public defence counsel averaged 1 hour and 12 minutes, the lowest time on court activities. The Vancouver judicare counsel averaged 2 hours and 21 minutes on court activities for vice and drug offences. The Burnaby judicare counsel averaged the largest amount of time on court activities, 4 hours and 6 minutes.

Burnaby public defence counsel spent much less time than usual on legal research and preparation of submissions and examination of witnesses for vice and drug offences. Compared to the other lawyer groups, public defence counsel spent less time on every activity, but the most notable reduction was in time spent on legal research and preparation of submissions and examination of witnesses. Of all the six offence categories, public defence counsel spent the least total case time, and the lowest time on all case activities, for vice and drugs cases. As reported in the comparison of effectiveness of the two modes of delivering legal aid (Report II, Effectiveness Analysis), Burnaby judicare counsel had a disproportionately high guilty plea rate for drug offences. The higher guilty plea rate was tied to averaged lower court times.

12.4 Time for Escape Offences.

Burnaby public defence counsel spent 4 hours and 29 minutes on escape cases, Vancouver judicare counsel averaged 4 hours and 18 minutes. While the Burnaby judicare counsel spent the most time, 5 hours and 11 minutes on escape cases, Public defence counsel and Vancouver judicare counsel averaged approximately the same amounts of time on client interviews, legal research, and other case preparation. They averaged approximately 55 minutes on client interviews, 21 minutes on legal research, and 24 minutes on activities in the category other case preparation.

For escape cases, the major differences between Vancouver judicare counsel and public defence counsel were in court activity times and time spent on preparation of submissions and examination of witnesses. Public defence counsel averaged 1 hour and 5 minutes on preparation of submissions and examination of witnesses. This is approximately 40 minutes more time than Vancouver judicare counsel spent on this activity. Vancouver judicare counsel averaged 2 hours and 15 minutes on court activities, about one half hour longer than public defence counsel. The difference in court time and preparation time cancel out, producing very similar total case times.

The Burnaby judicare counsel reported the largest total case times for escape cases primarily because they spent longer on court activities than did the other two lawyer groups.

12.5 Time for Alcohol Related Charges.

As shown in Table 12.1, there were few well defined patterns in average time spent in alcohol related cases. As in other offences, judicare counsel spent more time on the average in court than public defence counsel, and once again public defence counsel averaged more time preparing for examining witnesses and preparing submissions than judicare counsel. Otherwise, patterns were mixed for the three lawyer groups.

12.6 Time for Other Criminal Code Offences.

Vancouver judicare counsel and the Burnaby public defence counsel reported similar total case times for other criminal code offence cases. For other offence cases, as for violent offences, property offences, and escape offences the major differences between Vancouver judicare and Burnaby public defence counsel were in amounts of time spent on court activities and on preparation of submissions and examination of witnesses. The public defence counsel averaged 1 hour longer on preparation of submissions and examination of witnesses. Vancouver judicare counsel averaged 1 hour longer on court activities than public defence counsel. Total time for other offences category was 5 hours and 44 minutes for public defence counsel, and 5 hours and 58 minutes for Vancouver judicare counsel.

The Burnaby judicare counsel averaged longer times on cases in the other offences category. For Burnaby judicare counsel, total case time was 10 hours and 20 minutes. Burnaby judicare counsel spent less than 10 minutes on both preparation of submissions and examination of witnesses and other case preparation. Burnaby judicare counsel averaged much less time on these two activities than did the other 2 defence groups. Burnaby judicare counsel averaged approximately the same amount of time on client interviews as the other defence groups. Burnaby judicare counsel spent an unusually long time on legal research for other offences cases; 1 hour and 1 minute as compared to approximately 20 minutes for the Vancouver judicare and public defence counsel.

For cases in the other offences category, the major difference between the Burnaby judicare counsel and the other two types of counsel is time spent on court activities. The Burnaby judicare counsel reported 8 hours, on the average, on court activities, as compared to 3 hours and 29 minutes for Burnaby public defence counsel.

12.7 Summary of Time by Offence.

Vancouver judicare counsel and Burnaby public defence counsel averaged relatively similar total case times for violent, property, escape, and other offences. The major difference between Vancouver judicare and Burnaby public defence counsel for these categories of offences was that Vancouver judicare counsel averaged a longer time on court activities, while the public defence counsel spent more time on preparation of submissions and examination of witnesses.

Public defence counsel reported the lowest total case time for vice and drug offences. They averaged less time on all case activities for vice and drug offences than for any other offence category. The proportion of total case time spent on legal research and preparation of submissions and examination of witnesses for vice and drug offences was particularly low. Public defence counsel, however, took these cases to trial less frequently than judicare counsel. Burnaby judicare counsel reported the highest total case times for property, vice and drugs, escape, and other offences. Higher court activity times were the major factor in the larger total case times reported by the Burnaby judicare counsel.

The Burnaby judicare counsel differed widely from the other two lawyer groups on total case time spent on violent and other offences. They averaged roughly 1/2 of the total case time on violent offences that the other two defence groups reported, and roughly twice as long on cases in the other offences category.

The total amount of time which each lawyer groups spent on of each offence type were compared. Burnaby public defence counsel and the Vancouver judicare counsel both averaged proportionally the same amount of time for most offences. Burnaby public defence counsel and Vancouver judicare counsel had the lowest average total case times on vice and drug offences. Escape offences were the next lowest. Property offence times were higher than vice and drugs and escape cases, followed by the residual category of "other criminal code offences". The highest average total case time was for violent offences.

While public defence counsel and Vancouver judicare counsel followed similar patterns for vice and drugs, escape, property, other, and violent offences, they reported quite different average times for alcohol related offences. Public defence counsel spent relatively little time on alcohol offences compared to other offences: Vancouver judicare counsel averaged a larger amount of time on alcohol offences compared to other offences.

13. Time for Auxiliaries

The previous analysis was concerned primarily with the amount of time lawyers spent on various activities related to representing clients. Lawyers also have support staff which help with clients and cases. The public defence office employed a paralegal. Private firms often have articling students or regular students on staff. Total average case times were calculated for support staff in both the public defence office and in judicare offices.

The paralegal in the public defence office averaged 1 hour per case. Articling students, paralegals and students in judicare offices averaged 29 minutes for cases in Burnaby and 13 minutes for cases in Vancouver. If auxiliary time is added to total case time, the difference between the judicare mode and public defence mode of delivering legal aid is reduced. In Vancouver the average time becomes 7 hours and 8 minutes. For judicare cases in Burnaby, the average becomes 8 hours and 15 minutes. The public defence case average is increased to 6 hours and 36 minutes. The public defence average is still below the average for judicare. The difference between judicare time in Vancouver and Burnaby is accentuated.

14. Summary of Time Analysis

The amount of time a lawyer spent on a case varied by the case's administrative complexity, by procedure followed and by the type of charge. The major component of total case time for judicare counsel was an aggregate court time category which included time spent travelling to and from court, waiting in court and in actual court appearances. Across all cases, court time made up between 60% and 70% of total time. The second most important component of total case time was time spent with the client: Client time accounted for about 15% to 20% of total case time. Legal research and preparation of witnesses and submissions each accounted for about 15% of the total case time. Court time

dominated total case time. For the public defence counsel preparation of submissions and examination of witnesses was an important component of how time was spent, almost as important as court time. Public defence counsel spent under 40% of their time in court and about 30% of their time preparing submissions and for examining witnesses. This pattern, however, could be tied back to one staff counsel who averaged more hours than the other two staff counsel preparing for court appearances.

The time tariff analysis revealed several patterns which are worth special emphasis. Criminal legal aid practice is a court dominated practice. Most case time is court time. Little time is spent preparing for cases other than talking to the client. Court time and client time make up, on the average, 80% of total case time. The time spent with clients is fairly stable and predictable. On the average across all types of cases clients time averaged between 1 hour and 1 and 3/4 hours. The time spent in court, however, was much less uniform. Time greatly increased for trials and for violent offences. Court time increased less as administrative complexity increased.

The major uncontrollable factor effecting total case time is court time. Location of office appears to have a major influence on total time spent travelling to, and waiting at court. The Burnaby Provincial Court was highly accessible to the public defenders and they had the lowest total court times. Judicare counsel acting for clients in Burnaby were primarily lawyers located in Vancouver. They had the highest total court time. Staff counsel located near the court have a definite advantage in reducing average case time. Location of office near courts reduced total case time and increased efficiency.

In the next section time/activity analysis will be used to calculate hourly equivalent rates for judicare counsel and to analysis some model tariffs.

15. Alternative Tariff Analysis

As described in Section 3, there are four major types of legal aid tariffs:

- Time tariffs;
- Fee for service block tariffs;
- Seriousness tariffs; and

- Experience based tariffs.

Time tariffs pay lawyers for actual time spent on a case. Fee for service tariffs pay set amounts for specific services or blocks of services. Tariffs based on the concept of case seriousness adjust fees according to actual charges laid. Experience based tariffs pay at differential rates depending on the experience of counsel. Any particular tariff structure may be a combination of elements from these generic tariff categories.

The time tariff, fee for service tariff and seriousness tariff pay lawyers directly or indirectly for time spent on a case. Time tariffs pay directly for time spent. Fee for service and seriousness tariffs pay indirectly for time spent. Under fee for service or seriousness tariffs, it is assumed that certain activities or offence categories require more lawyer time than others and that payment should increase proportionally to time spent. An experience based tariff is based on the assumptions that more senior lawyers do not take legal aid cases, that more senior counsel provide better services than junior counsel, and that senior counsel can be attracted to legal aid work if their payment for services is increased. Experience based tariffs pay senior counsel a premium for their expertise they have developed over their years in practice.

These four major tariff categories were analyzed using the time by activity data collected during the evaluations. The strengths and weaknesses of each generic tariff category were explored and are reported here.

15.1 Time Tariffs.

Tariffs where lawyers are paid for the actual amount of time spent on a case are attractive to the bar. Legal services paid for privately are generally billed at hourly rates. Time tariffs directly link activities to payment.

Administratively time tariffs present some difficulties. It is not possible to project costs accurately. Costs to the legal aid plan would depend on time spent by lawyers. Time spent by lawyers is dependent on time spent in court, which is beyond the control of Legal Aid. Travel time to court and waiting time in court are parameters affecting total case time which, in turn, depend on the location of a lawyer's office and the scheduling characteristics of a court. These parameters are out of the control of Legal Aid. As described in the time analysis

sections, time related to court activities makes up 60% to 70% of total case time.

It is also administratively difficult to monitor bills from lawyers if the bills are completely based on time spent. If payments are based on time spent and there is no individual or organization which works directly towards limiting time, lawyers have no incentive to limit time to some essential or necessary level. Determining what time is necessary in a case and what time is not necessary is, however, a professional judgment and externally difficult to assess. At a minimum, time norms have to be established to form a basis for assessing actual time spent.

The time log data gathered in the evaluation was used to calculate preliminary time norms for time spent by legal aid counsel. These norms were then used to project tariff costs for various hourly billing rates. Time logs for judicare counsel were used to develop the norms; the public defence logs were not used. Public defence counsel generally spent less time on cases, particularly less court time. Norms based on a public defence mode of delivering legal aid would not accurately represent time commitments for judicare counsel.

15.2 Time Norms.

Based on Vancouver data, the average time spent by a criminal legal aid lawyer on a case was around 7 hours. Sixty percent of this time was court time; 40% was preparation time and time spent with the client.

The average payment to judicare counsel in Vancouver was \$225.89 in 1980. There was an increase in the tariff in mid-1980. The dollar amount shown is a composite of payments made both before and after the tariff was increased. The increase was about 8% overall. If the 1980 average billing is increased by 4% for the 1/2 year under the new tariff, the expected current average criminal tariff payment at the end of 1980 was \$234.93.

15.2.1 Equivalent Hourly Rate : Vancouver.

With an average payment of \$234.93 in Vancouver and an average case time of about 7 hours, the equivalent hourly rate for judicare counsel was \$33.99 or \$34. The equivalent hourly rate is the total payment divided by the hours logged on a case.

15.2.2 Equivalent Hourly Rate : Burnaby.

The average tariff payment in Burnaby was \$190.40. Augmented by the 1980 tariff increase, the expected current billing is \$198.02. Burnaby judicare counsel averaged 7 hours and 46 minutes per case. The equivalent hourly rate is \$25.48.

15.2.3 Equivalent Hourly Rate under Increased Tariff.

The criminal legal aid tariff was increased by about 38%. The expected average payment in Vancouver would now be about \$324. The expected payment in Burnaby would be about \$273.00. The equivalent hourly rate in Vancouver would then be \$46 and in Burnaby would be \$35.

15.2.4 Projected Billings under a Time Tariff.

If lawyers were paid on a time tariff basis, the actual billings submitted would fall across a substantial range. However, using the average case time calculated in the study, it was possible to project what the average billing would be. Table 15.2.4.2 contains the projections. The current hourly rate is \$34.00 in Vancouver.

Table 15.2.4.1

Equivalent Hourly Rates

	Current Tariff	Increased Tariff (38% increase)
Vancouver	\$34	\$46
Burnaby	\$25	\$35

If this were increased to \$50 an hour the average case cost would be \$350.00. At an hourly rate of \$100, the average case cost in Vancouver would be \$700.00.

Since more time was spent on cases in Burnaby, the average case costs would be higher with fixed hourly fees. At \$50.00 an hour, the average cost would be \$388.00. At \$100.00 an hour for legal services the average case costs would be \$776.00.

Table 15.2.4.2

Projected Average Case Costs

Hourly Rate	Vancouver	Burnaby
\$30	\$210	\$232.80
\$40	280	310.40
50	350	388.00
60	420	465.60
70	490	543.20
80	560	620.80
90	630	698.40
100	700	776.00

To bring judicare counsel up to an hourly rate of \$100.00 would require a 198% increase over the 1980 tariff. To raise the hourly rate to \$50.00 would require a tariff increase of 50%.

The figures presented in Table 15.2.4.2 are average cost figures. With a time tariff mechanism, the actual billings would range widely. It is both the strength and the weakness of such a time based tariff that billings may range widely. Billings are related to actual time spent, an attractive aspect for lawyers. Billings, however are not easily projected or monitored, an unattractive characteristic to people who administer Legal Aid plans.

Time tariffs can be modified to try to control the potential variability in payments. Maximum billable hours can be introduced. Lawyers could be permitted to bill for hours within a range. Fixed payments could be introduced for preparation time or time spent with clients, and variable hours could be built in for court time which is generally beyond the control of the lawyers. Modifications to time tariffs which limit some of the administrative problems but still preserve the individualization of billing

which lawyers prefer are possible.

15.3 Fee for Service Tariffs.

Fee for service tariffs pay lawyers for services or blocks of services, not for time spent providing services. The tariff in British Columbia is basically fee for service. Tariffs which pay for services, not for time, are administratively easier to control than time tariffs. Fees are set and there are few complicated bills to monitor. There is no incentive for lawyers to spend more time than needed on a case and costs can be projected with some confidence.

Fee for service tariffs, however, are not always popular with the person receiving the payment. Lawyers are often paid the same for long complicated cases as they are for simple cases. If the average time spent on a case is 7 hours, close to the average in Vancouver, the equivalent hourly rate would be \$34.00. The equivalent hourly rate for a case which takes 14 hours would be \$16.50.

While the hourly rates deflate as case time increases, the converse is also true. The hourly rates increase as case time decreases. The average case time in Vancouver was about 7 hours, but many cases took less than 7 hours. Cases which took 3.5 hours and were billed at the average rate, had an equivalent hourly rate of \$66.00. When people are paid under a fee for service structure they tend to forget the short cases which receive a higher return and remember the longer cases when they worked at a low equivalent hourly rate. In situations where time per service varies greatly, fee for service payment methods have the potential for leaving most people feeling that they are underpaid. The range of time actually spent on a case was great. For single charge cases the minimum reported time was 30 minutes and the maximum was 63 hours and 45 minutes. The maximum was unusual. Most cases required between 5 1/2 to 8 hours. The minimum reported time for a multiple charge case was 6 minutes; the maximum was 25 hours. Most case times fell between 6 and 9 hours. Multiple information cases ranged from 1 and 1/2 hours to 31 hours, with most cases between 6 and 9 hours. With such variability the potential for dissatisfaction by lawyers is great.

15.3.1 Balanced Tariff Structures.

Fee for service or block tariff schemes implicitly pay people for their time. When differential fees are paid, it is important that the fees match, at least proportionally,

actual time spent. The tariff structure should not be such that certain procedures are preferred by lawyers because they make more money when these procedures are followed. Choice of procedure should be made based on case and court-related factors, not on economic factors related to how much a lawyer will make. If a fixed fee is paid for a case which ends in trial and a different fee for a case which ends with a guilty plea, the fees should be structured so that the effective hourly rates are the same. When effective hourly rates associated with different procedures are the same, the tariff is balanced. There are no structural incentives to encourage a lawyer to opt for one particular court proceeding.

Balanced tariffs are only possible on an averaged basis. Case time varies, but fees are fixed. Any one particular trial may have a high equivalent hourly rate, or a low equivalent hourly rate. Over many cases, the tariff should balance. It cannot be balanced on a case by case basis.

Four British Columbia block tariff categories were analyzed to see if the tariff was balanced. The categories of procedural outcomes were:

- Failure to appear (FTA);
- Stays/withdrawals;
- Guilty pleas; and
- Trials.

The British Columbia tariff is complex with many additional procedures besides these four which are billable. These four, however, account for the bulk of all proceedings paid for by legal aid.

The average case times for cases which end in FTA's, stays or withdrawals, guilty pleas, and trials are given in Table 15.3.1.1.

Table 15.3.1.1

Time by Tariff Category

	F.T.A.	GUILTY PLEA	STAY/ WITHDRAWAL	TRIAL
Vancouver	4:27	6:19	5:43	9:07
Burnaby	3:23	6:36	6:15	10:51

The 1980 tariff payment for these categories of procedural outcomes are:

Table 15.3.1.2

Tariff Payment by Procedure

Guilty plea at Provincial Court	\$ 80
Trial at Provincial Court	\$165
a. each additional day	\$110
b. Speaking to sentence	\$ 55
Jury trial	\$215
each additional day	\$165
Stay	
a. entered on trial date	\$110
b. stay before trial	\$ 55

Other legal services such as appeals, crown adjournments, bail reviews, and show cause hearings are also paid for under the tariff.

A typical case in Vancouver or Burnaby is a composite of several services. Table 15.3.1.3 presents the pattern of services which are billed under the current tariff. The most frequently billed services were guilty pleas, one-day trials, stays, attendances to speak to sentence, and FTA's.

The pattern of billed services in Vancouver and Burnaby was similar, with one small exception: there were more crown/court adjournments in Burnaby.

Table 15.3.1.3

Services Delivered under the Tariff
by
Judicare Counsel

	Proportion of Bills including Vancouver	Specific Services Burnaby
Stay entered	16%	18%
Guilty-plea entered	31%	28%
Trial-day 1	31%	27%
-continued	6%	9%
Visit to Penal Institutions	4%	7%
Bail/Show Cause Hearing	5%	10%
Bail Review	3%	-
Preliminary Hearing	4%	4%
Speaking to Sentence	17%	17%
Crown/court adjournment	7%	22%
FTA's		
-on fix date	-	7%
-Trial date	4%	6%
-Other	3%	4%

The most commonly billed services were related to cases which ended with stays, guilty pleas, trials and FTA's. The average billings for cases including these services are shown in Table 15.3.1.4.

Two average billings are included in the above Table: the average billing for the period of the project (1979-1980), and a projected average billing under the current tariff which came into existence in mid-1980. The tariff increased payments by about 8%, but for only 1/4 of the time period of the project. The project billings were increased by 6% to project the current payments. These figures are for administratively simple cases with one charge, one information or indictment. The average payments shown in Table 13.3.4 include payment for the cluster of typical billable services which appear in cases. These are case averages classified by dominant procedure, not costs for individual services when they occur in a case. The

charges for show cause hearing, or speaking to sentence, or a visit to a penal institution, are averaged with the basic fee for a trial, entering a plea of not guilty or a stay.

Table 15.3.1.4

Average Bill

Service	Vancouver		Burnaby	
	1979-1980	Projected 1980	1979-1980	Projected 1980
FTA	\$112.85	\$119.62	\$107.20	\$113.63
Guilty Plea	147.12	155.94	185.25	196.36
Stay	160.70	170.54	127.77	135.44
Trial	227.84	241.51	254.00	269.24

If the tariff is balanced, the average billing should correspond to the average time spent on all services associated with a case.

Table 15.3.1.5

Equivalent Hourly Rates
Administratively Simple Cases

	Vancouver		Burnaby	
	1979-1980	Projected 1980	1979-1980	Projected 1980
FTA's	\$25.36	\$26.88	\$31.71	\$33.62
Guilty Pleas	23.31	24.71	29.64	31.42
Stays	28.14	29.85	19.36	20.52
Trials	24.98	26.48	23.41	24.81

When equivalent hourly rates were computed for administratively simple cases in Vancouver and Burnaby, the balancing pattern became evident. Table 15.3.1.5 lists the effective hourly rates for administratively simple cases which end with an FTA, guilty plea, stay/withdrawal or a trial.

In Vancouver, the pattern is highly stable. The effective hourly rate is about \$25. The tariff is highly balanced. In Burnaby the pattern was more mixed, less stable. Guilty pleas had the lowest effective hourly rate, \$20.52, followed by trials. Stays produced a higher effective hourly rate. The hourly rate for trials in Burnaby was about \$1.50 less than trials in Vancouver.

In Burnaby cases which ended with the client failing to appear had the highest return. Failure to appear cases produced the highest average equivalent hourly rate because many of them are billed at high rates. If a client does not appear on the trial day, which happens in more than 50% of FTA cases, counsel may bill for \$110, the tariff amount for a stay, if he or she was prepared for trial. The client's failure to appear reduced the potential court time by the length of the trial. The reduction in time was proportionally greater than the reduction in billing for guilty pleas, stays or trials.

There are no strong biases in the current tariff. In Burnaby there is some relative advantage in entering guilty pleas or having a client fail to appear (on trial date). The case to case variation was large enough that minor variations in average effective hourly rates would probably never be noticed. The current British Columbia tariff appears to be well balanced for administratively simple cases.

The tariff is not so well balanced for administratively complex cases. Table 15.3.1.6 lists the equivalent hourly rates for cases with multiple counts of one charge on one information or indictment, multiple charges on one information or indictment, and multiple information cases.

The average payment for administratively complex cases was \$172.70 for multiple count cases, \$218.62 for multiple charge cases, and \$326.67 for multiple information cases. Under the tariff increase in 1980 these averages become: \$218.62 for multiple count cases; \$231.74 for multiple charge cases, and \$346.27 for multiple information cases. The total time lawyers spent on these three types of cases, however, did not vary much. The averages ranged from 7

hours and 3 minutes to 7 hours and 43 minutes. Consequently, the equivalent hourly rate varied directly with the average billing. Equivalent hourly rate for multiple count and multiple charge cases were about \$26 and \$31. The equivalent rate for multiple information cases was \$49. Multiple information cases are billed and paid at a much higher rate than other types of cases.

Table 15.3.1.6

Effective Hourly Rates
For Administratively
Complex Cases

	Vancouver	
	1979-1980	Projected 1980
Multiple Count Cases	\$24.50/hour	\$25.97
Multiple Charge Cases	\$29.42/hour	31.19
Multiple Information Cases	\$46.00/hour	48.77

The tariff is not balanced in its payment of multiple information cases. The reason for the imbalance may be found in the tariff definition of when services provided to a client for multiple charges must be billed as a single service. The current tariff states that no additional fees will be paid for multiple charges. However, when there were multiple informations which resulted in trials or stays, judicare lawyers appeared to argue successfully that each of the multiple informations resulted in a separate trial or stay of proceedings for which separate preparation was made. Preparation time, however, was a minor component of total time. Court time dominated. Two trials on two informations or two stays on two informations, following one after another, did not take twice as long as one trial or one stay of proceedings.

Except for multiple information or indictment cases the tariff appears to be extremely well balanced. Average payments correspond well with average time spent.

15.3.2 Case by Case Analysis.

As mentioned earlier, there was great variation from case to case in the amount of time spent. On the average, tariff payments corresponded well with average time spent. In individual cases, however, the correspondence was low. The total time spent by judicare counsel on cases was compared case by case with actual payments made. When individual comparisons were made, only 22% of the variation in total payments made for cases could be related to actual time spent. Conversely, 78% of the variability in payment from case to case could not be related to time spent by a lawyer. High paying cases were rarely those which took a lot of time. Of more importance, from the private bar's views of tariff schemes, cases which took longer times were not necessarily or even frequently, high paying cases. On the average the tariff appears to be equitable, but from case to case there was little link between time spent and payment made. Given the low correspondence of time spent, on a case by case basis with payment, there will most likely always be dissatisfaction with a block tariff scheme.

15.4 Seriousness Tariffs.

Modifications can be made in tariff structures to pay differential fees by seriousness of offence. Violent offences are generally considered more serious than property offences and within property offences, breaking and entries are considered more serious than thefts. Seriousness based tariffs are structured on the belief that more serious offences require more preparation time and more court time and that this extra time should be paid for. If the more experienced and skilled lawyers handle the more serious cases, a seriousness based tariff could also be used to pay lawyers differentially for skill or experience.

Analysis of the time spent by lawyers supported the general belief that lawyers spend more time on serious offences than they did on less serious offences. The total time spent by judicare lawyers on violent offences averaged about 12 and 1/2 hours compared to the time spent on other types of offences which averaged around 4 to 6 hours.

Table 15.4.1 contains a list of the average billing for single charge cases classified into six crime categories.

As can be seen from the table the average billings did not vary much in administratively simple cases, except in the violent crime and alcohol related crimes category. Cases involving violent crimes and alcohol were billed at an

average of \$50 to \$80 above other cases.

Table 15.4.1
Average Bill by Seriousness
of
Offence

	Vancouver	
	1979-1980	Projected 1980
Violent	\$201.89	\$214.00
Property	151.10	160.17
Vice/Drugs	125.20	132.71
Escape	121.00	128.26
Alcohol	205.55	217.88
Other	133.24	141.23

When equivalent hourly rates were calculated, cases involving violent offences were paid for at a substantially lower rate. Table 15.4.2 contains equivalent hourly rates for administratively simple cases classified by crime.

Violent crimes were billed at a higher rate, but took substantially longer than cases involving other crimes. The result is an equivalent hourly rate for violent offences of \$17.46, ten to fifteen dollars an hour below most other crime cases.

The analysis of the equivalent hourly rates for violent offences strongly supports adjustments in the existing tariff for cases involving violent offences. Cases involving violent crime require more court time and substantially more client time. While the average billing is higher, it is not high enough to compensate for the increased time.

Table 15.4.2
Equivalent Hourly Rates
by
Offence

	Vancouver	
	1979-1980	Projected 1980
Violent	\$16.41	\$17.46
Property	27.88	29.55
Vice/Drug	30.54	32.37
Escape	28.14	29.82
Alcohol	30.77	32.62
Other	22.32	23.66

15.5 Experience Tariffs.

The last category of tariff which will be explored is an experience based tariff. It is often argued that criminal legal aid attracts young, inexperienced lawyers, and that more experienced lawyers drift away from legal aid to better paying areas of the law. It is argued that criminal legal aid representation would be improved if more experienced lawyers were enticed into remaining part of the legal aid bar. Increasing fees for more experienced lawyers is seen as a major way of keeping these lawyers available to take criminal legal aid referral work.

A sample of criminal legal aid lawyers were surveyed and asked questions about their practices and experiences. Thirty-nine lawyers were included in the sample. The cases which these lawyers handled were analyzed to determine the relationship between time spent on a case, years of experience, and outcomes of cases.

15.5.1 Time Spent by Experience.

The criminal legal aid lawyers were divided into 2 groups: those lawyers with more than 4 years experience acting as counsel in criminal cases, and those with 4 years or less. Using this division there was a difference of almost 2 hours in the total amount of time spent per case by the more and less experienced criminal legal aid lawyers. The more experienced lawyers spent more time per case than the less experienced lawyers. This difference was primarily a difference in the time spent in court. More experienced lawyers averaged about 1 hour longer in court or activities related to court appearances such as travelling to and from the court or waiting at court. This difference was not the result of the more experienced lawyers handling more trials which in general take longer than other procedures. Within the group of lawyers surveyed, the inexperienced lawyers had more trials than the experienced lawyers. However, the trials handled by the experienced lawyers lasted longer than those handled by less experienced counsel.

There was one other relationship worth noting. There was some trade-off in time spent on legal research and time spent preparing submissions and examinations of witnesses. The relationship was not extremely strong, but less experienced counsel spent more time on legal research and less time on preparing submissions and examinations of witnesses than the more experienced lawyers. Neither group spent much time on these activities (under an hour in both cases), but there did appear to be some change in case tactics as experience increased. It may be that the less experienced lawyers must spend time learning what the law and procedures are, while the more experienced lawyer can spend more time preparing for his or her case because he or she knows the law and procedures to be followed. More experienced counsel were not handling more trials and did not have average billings higher than less experienced counsel, but their cases did take more time. More experienced counsel were being paid less than less experienced counsel. The existing tariff structure contains disincentives for experienced counsel.

16. Conclusion

The average time spent on a criminal legal aid case by private counsel was between 7 and 8 hours. Sixty to seventy percent of this time was court related time-time spent travelling to, waiting at and appearing in court.

Client time made up another 15-20% of the total time. Judicare lawyers spent little time preparing for court, other than interviewing clients.

Total time spent on a case is greatly influenced by court time in criminal legal aid work and many aspects of court related time, particularly the case flow in the court, and office location. These factors are beyond the case to case control of individual lawyers. (Public defence counsel spent much less time in court than judicare counsel, but had a definite locational advantage with offices across the street from the Provincial Court). Tariff payments, therefore, really are court time payments.

The time/tariff analysis explored four generic tariff structures:

- time tariffs
- fee for service block tariffs
- seriousness tariffs
- experience tariffs.

In British Columbia lawyers are paid under a modified block tariff. If they were paid under a time per case tariff, the equivalent hourly rate would be \$34.00 for Vancouver cases and \$25.00 for Burnaby cases. The equivalent hourly rate calculated on a case-by-case basis varied greatly. Overall high time cases were not usually high payment cases, and conversely low time cases were not low paying cases.

On the average, across all cases, the equivalent hourly payments for most services in the British Columbia tariff were similar. There are no biases in the existing tariff which encourage lawyers to select particular services just to increase equivalent hourly payments.

Within the existing tariff there is one structure which does produce disproportionate payments. Multiple information cases have a equivalent hourly rate of \$46.00. Defence counsel clearly do not control the charging pattern, but when they accept multiple information cases they average higher payments for approximately the same amount of time as spent on single charge or multiple charge cases. The probable reason for this stems from the current tariff structure which makes it possible to charge separately for multiple informations if preparation was performed for each information. Separate preparations were often billed while

total preparation time (a minor component of the total case time) did not vary.

The analysis of the time log data supported the use of seriousness tariffs in a simple form. Violent offence cases averaged about 12 hours total time versus 4 to 6 hours for other offences. The difference came primarily from increased court time linked to more trials in violent offence cases and more time spent with clients.

An analysis of the time log data also supported an adjustment in payment for more senior counsel. On the average counsel with 4 years or more experience in criminal law spent more time on cases than less experienced counsel. Yet their average billings were similar, producing a lower equivalent hourly rate. More experienced lawyers earned less on a hourly basis than less experienced lawyers. More experienced lawyers spent more time in court and more time preparing witnesses and submissions.

Overall, the time tariff analysis revealed a basically balanced tariff structure within particular courts. Only two courts were examined (Burnaby and Vancouver). The tariff was not as well balanced when the two courts were compared to each other. The tariff analysis also reinforced the image of criminal legal aid work as a court-time dominated practice not involving much case preparation.

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