Is Justice Delayed, Justice Denied? Changing the Administration of the Winnipeg Family Violence Court †

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I. INTRODUCTION:

The well-known, frequently used aphorism in the title of this article implies that faster justice is better justice. This was a motivating factor in the introduction of a new administrative process for handling cases in the Winnipeg Family Violence Court (FVC). It seems like common sense that a reduction in the time it takes for a criminal matter to work its way through the courts would improve the exercise of justice (Bell et al. 2011). However, we seldom have the opportunity to examine the experience of justice personnel and the court system before and after changes in administration to measure whether this is actually the case. The introduction of the Front End Project (FEP), a new program for

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streamlining cases in the Winnipeg FVC provided us with this opportunity. A longitudinal study of the FVC provided researchers with a valuable before and after data set. This quantitative data was supplemented with key informant interviews to explore the impact of this program on criminal justice personnel. Our study uses these two measures to examine whether the FEP shortened the time for justice to be served or improved the administration of justice in other ways. This paper suggests that while the results of the FEP are mixed, there are some positive developments that make this author optimistic about its future.

II. BACKGROUND

In 1990 the Winnipeg Provincial Court became the first court in Canada to develop a specialized response to family violence cases, known as the Winnipeg FVC. This court hears all cases involving individuals who are in a relationship of trust, dependency and/or kinship with their assailant. Thus, the FVC hears cases involving a criminal offense against an intimate partner, as well as cases of child abuse, child pornography and elder abuse. The goal of the FVC was to hold offenders accountable, to impose sentences commensurate with the seriousness of the crime and to exercise flexibility in responding to first time accused differently than repeat offenders. The introduction of the specialized court resulted in a rapid increase in the volume of cases (Ursel 1992; 2000; 2012a). In 2004 the Provincial Court Chief Judge introduced the 'Front End Project', the goal of which was to remove most administrative matters from the court room and commit all components of the 'front end' of the system (police, prosecutors and defense lawyers) to meet prescribed timelines to submit essential information so that cases could proceed to court. Prior to the FEP, many hours of judges', prosecutors', and defense lawyers' time would be spent in court rooms hearing/making requests for remands because not all of the necessary information to proceed was available. A dedicated judicial justice of the peace (JJP) was appointed to ensure compliance with the prescribed time frames. It was expected that court hearings would occur when all necessary information is collected and the defense lawyer is ready to enter a guilty plea or set a trial date. This process was designed to substantially reduce the number of courtrooms and court personnel involved in hearings for the purpose of remanding a case. In the first two years case management data indicated significant

success in meeting these goals. This project won the 2006 United Nations Public Service Award.

However, case management data does not collect the details of each criminal matter to determine whether efficiency and speed had an impact on the original goals of the FVC court, including court outcomes and sentencing. The purpose of this paper is to explore the impact of the FEP on these factors as well as revisit the original case management assessment, six years later, to see if the efficiencies of the model were sustained. It is important to note that while the FEP was first applied to the specialized family violence court, the perceived administrative advantages of this system resulted in the process being applied to all matters in provincial criminal court within a few years. This study however, applies only to the impact of the FEP to cases heard in the Winnipeg FVC.

III. GOALS AND PROGRAM COMPONENTS

The intended outcome of the FEP was threefold: 1. More expeditious timelines for proceeding with criminal matters; 2. More efficient use of courtrooms; and 3. More effective use of human resources. To achieve these goals a number of changes were introduced. In response to the first goal, expeditious case processing, timelines were set for all of the key criminal justice system (CJS) professionals to have their information completed. Police would need to commit to have full reports to prosecutors within a certain time, prosecutors would commit to disclosure to the defense lawyer within a certain time, and defense lawyers would commit to having their case ready by a certain time so that when the key personnel met before a judge in a criminal court, a substantive hearing would occur, either to enter a plea of guilt or set a trial date. The agreed upon timelines were a product of negotiation with representatives of police, prosecution, and defense at the table with the Chief Judge of Provincial Court. Recognizing that complex legal matters may not always be able to achieve clock-work efficiency, an administrative court was established to address situations in which agreed upon timelines could not be met. The administrative court was set up with one judge who would meet with one prosecutor (representing all Crown cases) and the relevant defense lawyer/s to determine and hopefully remedy the situation causing the delay. It was intended that the implementation of timelines and the introduction of administrative courts would provide a more effective use of courtrooms, fulfilling the second goal of the project.

The above two initiatives were expected to lead to the third goal of the project which was more effective use of human resources. The specific intent was to free up judges' and prosecutors' time from attending administrative hearings. To achieve this goal a new role emerged for JJPs and for Crown attorney assistants. The tracking of cases and timelines were assigned to JJPs identified as pre-trial coordinators, who would communicate with the 'front end' of the justice system, (i.e. police, prosecutors, and defense lawyers) to ensure that they met their timelines. In addition, Crown assistants would be tasked with all communication to the pre-trial coordinators regarding timeline issues and requests for time extensions where necessary. When the agreed upon timelines were exhausted the case would be transferred from the trial coordinators court to an administrative court.

This liberated prosecutors and judges from countless hours of court appearances for administrative matters. As a result, concurrent with the introduction of the FEP, the prosecutor's office introduced 'Crown ownership' of files. This was a significant change in the prosecution process, because each prosecutor would be responsible for a particular accused and would stay with the case over time, prosecuting any subsequent re-offenses. This facilitated prosecution in two ways. First, the Crown became very familiar with the accused and the pattern of their offending behaviour. This in-depth knowledge, provided prosecutors with greater evidence to present at bail court, sentencing court and/or trial. Secondly, the victim would only have to interact with one Crown, who would be familiar with their case history. This innovation was only possible through allocating the administrative matters to paraprofessionals and is perhaps the best example of more effective use of personnel.

IV. METHODOLOGY

A mixed method, combining analysis of quantitative and qualitative data, was selected to examine the impact of FEP. The quantitative component of this study involved an analysis of court cases processed before, during and after the introduction of the FEP to see if there were any significant changes in processing time, conviction rates and/or sentencing patterns. This data consists of a selection of years of court data which is part of a much larger longitudinal court study conducted by the author in partnership with Manitoba Justice. The longitudinal data is not a sample but a complete set of all cases heard before the

specialized court which has been collected without interruption for 24 years.

The FEP was introduced in the year 2003-2004. Our court outcome data includes five years of data: two selected years before the introduction of FEP, the year FEP was introduced and two selected years after the introduction of FEP. The five year data set is not a sample; it consists of all cases (16,412) before the family violence court in those years. These cases include intimate partner violence, child abuse, child pornography and elder abuse cases, unless otherwise indicated. Overall, about 75% of the cases heard in the court involve intimate partner violence (IPV). For some analysis, samples from the larger data set are used and the reasons for this will be explained.

The qualitative component of this study involved interviews with key informants, (personnel within the justice system), about the impact of the FEP on their work. A standardized open ended interview guide was used by the author who conducted all interviews. The challenge in selecting key informants was to identify individuals who had been in their practice before and after the introduction of FEP so they could reflect on the impact of the project on their work. Since interviews were conducted in 2012, we needed personnel who had been in their practice at least 10 years. The 15 respondents recruited had in fact been in practice for an average of 15 years. The key informants included four judges, four prosecutors, three court administrators, two victim services staff and two defense lawyers.

To assess the impact of the FEP we explored its effect on processing time, conviction rates, sentencing patterns and practitioners experience of the work that they did. To address these research questions we analyze before and after measures of court processing, court outcomes and sentencing patterns, as well as key court personnel's assessment of the success of the new system.

A major limitation of this study is the lack of victim or accused interviews. An important measure of the impact of justice is the victim's and/or the accused assessment of the court process. However, resources did not permit researchers to recruit a sample of victims or accused whose cases had been heard before and after the project.

V. FINDINGS

A. Adherence to Timelines

The initial positive reports on time reductions resulting from the FEP were based on data collected in the first two years of its implementation. Our data allowed us to revisit the court processes to see if time reductions were still evident four to six years after implementation. We were interested in the phenomenon of institutional drift: could the agreed upon time frames for reporting and sharing information among all of the criminal justice personnel be maintained over time or would staff eventually 'drift ' back to old practices?

The broad comparison of average time to process all cases in the family violence court from first appearance to final disposition reveals a substantial reduction in time. The average time to disposition in 2001-2002 was 304 days and the average time to disposition in 2007-2008 (four years after implementation) was 230 days, this 74 day reduction constitutes a 24% reduction in average case processing time. As indicated in Table 1 below, we find that cases that end in a stay of proceedings are disposed of more quickly in 2007-2008 than in 2001-2002.

Table 1 Average Time to Case Disposition for Selected Years: Before and After Front End Project

	2001-02 (N=3,913)	2007-08 (N=2,702*)	Change	% Change
All cases	304 days	230 days	- 74 days	24%
Stay**	309 days	208 days	-101 days	33%

*All tables N=number of individuals.
**Stay - we excluded those cases that were stayed for counseling because they extend time to allow for completion of counseling.

Because the stays constituted 33% of all cases in 2001-2002 and 39% of all cases in 2007-2008 much of the overall reduction can be explained in terms of the shorter time to dispose of stayed cases.

When we examine the time involved in the disposition of trial cases, we find that FEP did not reduce trial times. We took a sample of trial cases each year for five years, one year (2001-2002) prior to the FEP and four years after the introduction of the FEP to see if the time from arrest to disposition changed. For this sample we only included accused in adult intimate partner abuse (IPV) cases who were out of custody. We limited the sample to IPV out of custody cases because they were more numerous and subject to a different timeline than in custody cases.

Table 2 Case Processing Time for Domestic Violence Contested Cases (Trials)

Year	Arrest to 1st Appearance	1st Appearance to Disposition	Total Time (Arrest to Disposition)
2001-02	25.42 days	514.61 days	539.89 days
2005-06	20.14 days	578.48 days	598.61 days
2006-07	25.93 days	548.62 days	574.55 days
2007-08	17.18 days	476.14 days	493.32 days
2008-09	12.25 days	588.04 days	603.45 days

The first appearance (after FEP) occurs before a Pre Trial Coordinator.

Overall the single difference is the time from arrest to first appearance which is an average of 25.4 days before the FEP compared to an average of 18.9 days or a 26% reduction after the FEP. However, from arrest to disposition the average time in 2001-2002 was 539.9 days and the average after FEP is 567.5 days, a 5% increase. Thus, when it comes to trials for out of custody accused FEP has not succeeded in shortening time.

Trials, however, may not be the best measure for timelines since they only account for 2% of all cases before the court. To assess the

impact of the FEP on timelines, a consideration of guilty plea cases may well be a better measure. Because this work was extremely labour intensive, we limited the comparison to two years, 2001-2002 (before FEP) and 2007-2008 (after FEP). For each year we did a random sample of guilty plea cases for (IPV) cases that did not have a previous trial date set. In 2001-2002 for out of custody cases, we chose every 6th accused. If they had a trial date we selected the next person. For in custody, we followed the same procedure and selected every 7th person. For 2007-2008 for out of custody cases we could not do a random sample because only 41 accused met the criteria; for in custody cases, we selected every 5th accused. We did this to ensure that we were comparing, like cases and not comparing early guilty pleas with contested cases set for trial that resulted in a late guilty plea.

We calculated the average time to case disposition in 2001-2002 compared to the average time to disposition 2007-2008. Using a difference of means test we could determine if the differences were statistically significant. Table 3 below presents the results.

Table 3 Case Processing Time for IPV Guilty Plea Cases Before and After FEP

	2001-2002	2007-2008	
Out of Custody Cases Difference	(N=46) Mean	(N=41) Mean	
Avg. # Days days	212.9	187.9	-25
In Custody Cases	(N=46) Mean	(N=48) Mean	
Avg. # Days days	117.9	108.0	-9.9

Out of custody: T-test -12.9, $p<0.01$
In custody: T-test -9.7, $p<0.01$

Clearly the differences were in the right direction, for out of custody cases after FEP there was a reduction of 25 days in the average time to

case disposition, for in custody cases after FEP the reduction was 9.9 days. In both cases the differences were statistically significant.

We also recorded the number of timeline violations associated with each case in the 2007-2008 sample, (before FEP there were no established timelines). Despite the success in reducing the average number of days to disposition the data indicates that in the case of guilty pleas there appears to be considerable difficulty meeting the agreed upon timelines. For out of custody cases in 2007-2008, 39% of the cases had timeline violations noted on file, the majority 62% had a single timeline violation, 25% had two and 12.5% had three violations. For in custody cases 25.5% of the cases had violations noted on file, 66.7% had single violations, 25% had two violations and only one case had 3 violations.

Most of the key informants felt that adherence to the agreed upon timelines had seriously declined. One judge pointed out that the growing number of administrative courts in operation and the size of their dockets is evidence of the difficulties meeting timelines.

> "The size of those dockets, at least in the past, has been quite significant….like the old screening courts to some extent. The numbers can still be high. You know, I remember a number of years ago sitting from 9:30 a.m. to 5:30 or 6:00 at night….with no break, literally no break. That is, no bathroom break, no lunch break, no nothing, it was one of those [situations] you were just welded to the seat" (Judge 2).

One judge who regularly sits in administrative court identified two major sources of delay; first, the assignment of counsel for the accused and secondly, the issue of disclosure (has all of the necessary information been received by the prosecutor and shared with defense?).

The problem of delays due to unrepresented accused became so severe that a Legal Aid administrative court was developed. The biggest stumbling block was to provide Legal Aid with all of the information required to determine the accused eligibility. Persons in conflict with the law are often not individuals who keep track of their income records. Thus, through a combination of negotiation with Legal Aid about relaxing some of their bureaucratic requirements and creation of the specialized Legal Aid administrative court, the system is attempting to reduce that source of delay.

With regard to timeline violations due to delay in disclosure, some judges felt that not all of their colleagues were equally strict in requiring accountability and action in the face of delays. Judges have commented that there needs to be consistency for administrative courts to be effective.

> "[If] counsel feel they, at least, have a fighting chance of not being quizzed extensively on what the holdup is, then administrative court loses some of its power…it emphasizes the importance, I think of everyone being close to being on the same page" (Judge 2).

One of the questions asked of all the participants is if they felt there was "institutional drift" back to the old ways of doing things. Two judges responded affirmatively to this question and one judge reported that they were just in the process of reviewing the FEP protocol.

> "We do have institutional drift …I'd love to see the stats on remand delay and trial delay. I'd be shocked if they're as good as we got in the early days of the project. We may get back to that institutional thing (drift). The fact that they (administrative courts) proliferated and the fact that there are so many matters in there is a great worry to me. Why do so many cases go in there? Why are there timeline violations? So does that mean that the timelines were inappropriate to begin with or people aren't adhering to the agreements that they made. I suspect both" (Judge 4).

One of the most frustrated informants expressed their concern with administrative courts and time delays. A defense lawyer remarked that although judges and prosecutors no longer had to attend administrative hearings, defense lawyer's presence was required. Referring to these front end courts, one defense lawyer stated:

> "Crowns didn't have to come to court so they weren't as accountable in my experience…You have a roomful of defense lawyers, we still all have to come to court. The onus, I think has increasingly shifted to defense to move a case forward and contrary to what some people may tell you, that's really not defense's job. …prosecuting used to be a verb. There are very few prosecutors who take the steps to move a case forward since FEP because there is no pressure on them from a judge" (Defense lawyer 1).

Overall, we find that the reduction in time for a case to proceed in FVC was greatly dependent on how the case was resolved. Reductions were significant in cases resolved by a stay of proceedings (33% reduction) and guilty pleas, however, there was no substantial time reduction in trial cases. Our data does indicate a growing problem in meeting agreed upon timelines as indicated by the proportion of timeline violations – 39% for out of custody and 25% for in custody guilty plea cases. Challenges meeting agreed upon timelines is also identified in the observations of our key informants.

B. Effective use of court rooms and court personnel

In addition to reducing the processing time, the FEP was designed to reduce the number of hearings with a full complement of personnel. Specifically, the intent was to have hearings for remands presided over

by JJPs, designated as pre-trial coordinators. Using the guilty plea court sample above, we also had a useful measure of the number of full hearings (identified as presence of judge, crown attorney and defense) that occurred from first appearance to final disposition before and after FEP. What we are excluding are hearings presided over by pre-trial coordinators and administrative courts. Once again we have separated the out of custody cases from the in custody cases because they are subject to different timelines which has an impact on the average number of hearings before FEP. Table 4 below identifies the number of full hearings before and after FEP, clearly indicating a significant reduction for in and out of custody cases.

Table 4 Average Number of Full Hearings Before and After FEP for D.V. Guilty Plea Cases

	2001-2002	2007-2008	
Out of Custody Cases	(N=46) Mean	(N=41) Mean	Difference
Average # Full Hearings	5.37	1.4	3.9
In Custody Cases	(N=46) Mean	(N=48) Mean	
Average # Full Hearings	10.24	2.21	8.0

Out of custody: T-test -13.3, $p<0.01$
In custody: T-test - 7.6, $p<0.01$

This quantitative difference had a significant impact on the day to day work of CJS personnel. Our key informants articulated this difference when contrasting the nature of their work before and after FEP. Prior to separating administrative matters from substantive legal matters, all Crown attorneys, judges and defense lawyers interviewed identified the overwhelming size of dockets. Volume really militated against deliberation and many informants referred to the intake and screening courts as 'assembly line' or 'sausage factory' work. Commenting on the system before the FEP, one Crown commented on the intake court process:

> "I remember having to come in on a Saturday and Sunday to prepare for the Monday morning docket that would have over 400 matters on it. It was just sort of like a mill, you just address the files, remand them, adjourn them and so on, that's how the court system worked" (Crown 3).

The legal aid duty counsel had a similar comment:

> "I can tell you that Monday intake court was a zoo. It was a very stressful day for me and the court as well" (Defense 1)

One judge commented on the amount of time they had to preside over administrative matters prior to the FEP:

> "…an awful lot of time would be taken up with those first steps, such as advising the person that they have a right to a lawyer; getting the person attached to legal aid or to seek a lawyer privately; getting the lawyer to get a police report; seeking bail variations; getting Crown to review whether they had a case to proceed against one or both parties" (Judge 3).

Following the intake process, there were screening courts. These courts dealt largely with administrative matters and were overwhelmed by volume as well. As one judge remarked:

> "…screening courts …were so large and so unreal…it really just became a bit of a sausage factory …it was difficult to spend much time on any particular matter to…get to the heart of what the particular problem was to investigate" (Judge 2).

This led to backlogs. As one judge expressed:

> "The back log at that point in time was unconscionable…We had lots of docket courts where all that happened for five and a half hours a day was judges did remands and cases got remanded" (Judge 4).

The introduction of the FEP is credited with making the system less chaotic through separating the administrative matters from substantive legal matters and assigning different personnel to the two tasks. In addition to streamlining the system, the creation of new job descriptions and the negotiation necessary to implement this model resulted in a work culture shift for many of the personnel involved.

C. Changing the Work Culture

While the FEP was designed primarily to reduce case processing time and increase efficiencies it also had the somewhat unanticipated effect of changing work culture. This theme was articulated by a number of key informants.

> "So one of the strengths, which was unintended, was the start of a change of culture; a culture of collaboration, of discussion, which I think, I believe probably does continue today at some levels" (Judge 4).

Interviews indicated that the major human resource impact was most significant for four professions: (1) Crown attorneys; (2) prosecution assistants (paralegals in prosecutions); (3) JJPs who became pre-trial coordinators; and (4) judges.

Two categories of staff now play a more independent role as paralegals in the administrative courts: JJPs and Crown assistants. The pre-trial coordinators now preside over the intake and remand courts. The court administrators spoke of the impact of the FEP, in particular the creation of pre-trial coordinator positions which resulted in a new line of work for JJPs, increased responsibility and greater job satisfaction.

> "…it's brought about a change in our workplace here definitely and the way in which court functions…It certainly has provided for people to take on new roles that were obviously not available to them before, such as the pre-trial coordinator role" (Court Administrator 1).

Similarly, the Crown assistants also experienced a significant change in their work and their responsibilities. As one Crown involved in the implementation stated:

> "…training our paralegals was a big change…I think there was nervousness at first, but I think that it's a really valued position in our office now, a really looked-up-to position… I think that there is huge job satisfaction." [They are playing an important] … "role in court, running the dockets on their own and having interactions with defense counsel about adjournments and things like that. I think it's empowering" (Crown 2).

The respondents most enthusiastic about the FEP were the prosecutors who valued this project most for facilitating the introduction of Crown ownership of a file. All of the prosecutors interviewed highly valued file ownership and felt it enhanced their ability to prosecute cases more effectively.

> "I like ownership. I think being responsible for my file makes me more accountable, more invested in the outcome and gives me the availability to be more involved in the people in the files" (Crown 1).

One prosecutor recounted an experience she had, which she attributed to her greater knowledge of the individuals involved that Crown ownership permitted.

> "I recall one woman . . . who came to court . . . and was addressing the judge, asking for contact with the accused. I was indicating that (contact) should not be a part of the disposition. Part of the probation order should include a no contact order because she wasn't in the best position currently to assess the risk. For a variety of reasons the judge ordered it (no-contact). When I went out of the court room, she asked to speak to me privately in the witness room, so we went into this room. I was waiting for the barrage, the blast. But she

> hugged me and thanked me and said she'd been feeling such pressure from his family to come and felt guilty about doing it. …(she) was so glad that I had known her well enough…to put the situation in context before the court that allowed the no contact order to be put in place" (Crown 2).

One judge, who was previously a prosecutor, summarized the significance of the move to Crown ownership:

> "…We felt very strongly that there was a gap in terms of the Crown being able to maintain continuity and to have the full picture when it came to both the offender and the victim. So from my perspective that was a really key component of affecting change and that was ensuring that we could have file management so that is, one Crown, one file, one Crown, one offender and one Crown, one victim where possible so that the Crown would always have the full picture and the history of the parties in terms of the abuse and their involvement in the system" (Judge 1).

This same judge added:

> "I see a higher quality of prosecution from my perspective on the bench; I think it ups the ante in terms of the level of seriousness" (Judge 1).

Crown ownership also had an impact on the work of victims services staff. In pursuit of the "full picture" of the dynamic of abuse in a relationship, prosecutors relied on victim service staff for greater information from the victim. A victim service respondent talked about the change in work culture which resulted in a concurrence of Crown ownership, the new computerized system (PRISM) and younger Crown attorneys who were comfortable with computers.

> "…things are happening a lot quicker than they used to and I think…, there's been a big shift in the culture of the Crowns. They really are making better use of us I would say…way beyond just reading our memos" (Victim Service staff 2).

The Front End Project also introduced some very welcome changes into the day to day work of the judges.

> "We saw an immediate change in terms of less administrative matters coming before us. As a judge when we're going to court, we're more often doing something significant, such as bail or sentencing or trial" (Judge 3).

This judge observed that the division of labour between the administrative and substantive court hearings and the efficiencies it introduced, has enabled the courts to handle what would have been a crushing volume of work under the old system.

> "Well, I don't see how we could possibly handle the numbers that we're handling now under the old system. I mean we're trying to maximize the use of our judicial resources and we're still struggling" (Judge 3).

The professionals who reported the least satisfaction with the FEP were the defense lawyers. They acknowledged that FEP introduced efficiencies for court personnel but they did not express the same benefits to their day to day work as prosecutors.

Defense lawyers expressed frustration that they may want to file for a variation in conditions. This may require that defense seek out a Crown to confirm their position on variation and a judge to approve, if there is consent. In response to this particular concern, prosecutors have indicated that there is always the opportunity to determine these issues ahead of time via email with the prosecutor who has conduct of the file and, with consent of the Crown, the matter can be handled quickly.

A judge heard similar sentiments discussed by defense. This judge observed:

> "The one thing I haven't talked about is that the defense lawyers still say they want to go back to the days of the old screening courts. And they say that what they have lost as a result of the FEP is the opportunity to meet face to face with the Crown attorney. And I say we didn't take that away from you, all we did was take away the ability of having a judge present when you're having that conversation with the Crown, and in my view, it's inappropriate for there to be a judge present for Crown and defense to have a conversation" (Judge 1).

This judge also confirmed the defense lawyers' belief that you need "pressure from a judge to move a case forward" (Judge 1).

> "I think that defense lawyers in particular continue to be court driven. And what I mean by that is unless there's a court date looming; they're not doing anything on a file" (Judge 1).

To summarize, the FEP did have a significant impact on the day to day work and satisfaction of a number of professionals specifically, paralegal's work and responsibilities, Crown ownership of files and judges release from many administrative hearings. In terms of indirect impact, victim services staff expressed the view that the FEP, along with the introduction of computerized systems and Crown ownership of files, had improved and increased the communication between the two offices. All of the above professionals were able to identify very distinct improvements in their work as a result of the FEP, however, defense lawyers were much less enthusiastic. They preferred the old screening court system because they felt it facilitated greater contact between prosecutors and defense. However, both defense lawyers did acknowledge that the docket courts presided over by the pre-trial coordinators had substantially reduced the volume and the chaos of the old docket court system.

D. Court Outcome

While there is considerable evidence that the court process has changed, an important issue still to be addressed is whether these changes had an impact on court outcomes. We will look specifically at conviction rates and sentencing patterns before and after the FEP.

In order to appreciate whether the FEP had an impact on court outcomes we need to control for any changes in factors that affect outcome such as, type of charge, characteristics of the accused and prior record of the accused.

Table 5 Type & Frequency of Charge By Most Serious Charge Per Case By Year

Type of Charge	1999-00	2001-02	2003-04	2005-06	2007-08
	(N=4,047)	(N=3,929)	(N=3,121)	(N=2,697)	(N=2,712)
Common Assault	50%	49%	47%	43%	44%
Breaches	18%	21%	22%	16%	25%
Assault w/weapon	12%	11%	11%	14%	10%
Ag. Assault &ACBH*	7%	7%	7%	8%	8%
U.T. & Crim Harass**	7%	7%	7%	7%	5%
Sexual Assault	3%	2%	3%	3%	4%
Murder***	(10)	(10)	(14)	(4)	(3)

* Aggravated assault and ACBH (assault causing bodily harm)
** UT (Utter threats) and Criminal Harassment
*** Murder recorded as number of cases not percentage

During the study period we see some minor fluctuations in the most serious charge per accused. From 1999-2000 to 2007-2008 there was a consistent decline in common assault being the most serious charge an accused had when they enter the court. Overall, there was a decline of

6% between 1999 and 2008 in common assault and an increase of 7% in breaches constituting the most serious charge. The other clear change was the reduction in number of murder cases before the court. We should be cautious in our interpretation of what seems like a dramatic decline in homicides between 1999 and 2008 because the limited number of murder cases, relative to other charges, results in significant variation from year to year. For example, domestic homicides in Manitoba from 2006 to 2012 fluctuated from a low of 3 in 2006 to a high of 10 in 2010 (Ursel 2012b).

The other factors known to affect court outcomes are the characteristics of the accused and the victim, as well as the prior record of the accused. Thus, to ensure that any differences in court outcome observed are not an artifact of these factors, we compare these characteristics before and after the FEP. The prior record of the accused is an important determinant of court outcome and sentencing (Ursel, and Hagyard 2008). Table 6 below indicates the most serious charge an accused had in prior court cases. In the case of common assault we distinguish between a general assault and an assault on a domestic partner. What is most striking is the fact that over 80% of all accused had prior charges, the overwhelming majority of which were for prior assaults against persons.

Table 6 Most Serious Prior Charge of the Accused by Year

Prior Charge	1999-00	2001-02	2003-04	2005-06	2007-08
Prior Charges	82%	83%	81%	81%	81%
Charge Type					
Domestic Assault	37%	44%	40%	39%	42%
General Assault	23%	18%	16%	14%	13%
Sexual Assault	3%	4%	7%	6%	6%
Child Abuse	1%	2%	3%	7%	8%
Murder	0%	0.5%	0.2%	2%	2%

Other charges	18%	15%	14%	13%	10%

There is a pattern of change in the prior charges an accused has had. There is an 8% reduction in other charges (not violent crimes). Among crimes against persons, there are increases of 5% in domestic assaults, 3% in sexual assaults, 7% in child abuse, and 2% in murder/attempt murder prior charges. This suggests that the accused have a more violent prior charge history over time which could be correlated with more serious sentences.

In addition to changes in the prior record of the accused, there are also some changes in the characteristics of the accused. We observed an 8% increase in the number of Aboriginal accused and a 9% decrease in accused of European origin from 1999. The increase in accused of Aboriginal origin may affect both court outcomes and sentencing patterns because Aboriginal accused tend to have a lower rate of stays of proceedings and are more likely than non-Aboriginal offenders to receive a sentence of incarceration (Brzozowski, Taylor-Butts, and Johnson 2006; Perreault 2009; Ursel 2007). In addition, there was a decrease of 3% in females accused. This is significant because women tend to have a higher rate of stays of proceedings and less severe sentences (Fraehlich, and Ursel 2014). The decline in female accused is largely explained by the reduction in dual arrests after the Winnipeg Police Service introduced 'primary aggressor' training. This training resulted in a dramatic decline in dual arrests, from a high of 9% of all cases in 1999-2000 to a low of 3% in 2007-08. The changes in prior record, ethnicity and gender of the accused are anticipated to have a moderate impact on court outcome and sentencing.

To address whether or not the FEP had an impact on court outcome, we will examine two years of before data and two years of after data from FVC and include 2003-2004 data, the year the FEP was introduced. We will look specifically for changes in conviction rates, stay rates and any changes in sentencing patterns.

Table 7 indicates that during the period under review, both before and after the introduction of the FEP, conviction rates fluctuated between 52% and 57%. Prior to the FEP in 2001-02, conviction rates peaked at 57% and following the introduction of the FEP in 2005-06, conviction rates peaked at 56%. There does not appear to be any evidence that the Front End Project had either a positive or negative effect on conviction rates.

Table 7 Court Outcome by Year

Outcome	1999-2000 (N=4,038*)	2001-2002 (N=3,913)	2003-2004 (N=3,090)	2005-2006 (N=2,669)	2007-2008 (N=2,702)
Guilty Plea	51%	55%	53%	56%	53%
Trial: Guilty	1%	2%	0.5%	0.1%	0.1%
All Convictions	52%	57%	54%	56%	53%
Rehabilitative R.**	8%	9%	9%	7%	7%
Outcome with Consequences	60%	66%	63%	63%	60%
Stay w Peace Bond	8%	7%	8%	8%	8%
Stay of Proceedings	30%	26%	28%	33%	31%
Trial: Not Guilty	1%	1%	1%	1%	<1%
Dismissed/Discharged	1%	1%	<1%	<1%	<1%

*The total number has been adjusted to remove accused who died before sentencing and a small number of cases with missing information.
**'Rehabilitative R.'

'Rehabilitative R' refers to a rehabilitative remand, a circumstance in which the accused is judged to be a low risk and is likely to benefit from a treatment program for abusive persons. In this case, the prosecutor delays the final decision on prosecution, giving the accused an opportunity to attend, participate and complete a treatment program. If they do so successfully, the prosecutor will stay the case. If they fail to do so, then the prosecutor has the ability to proceed with the prosecution. In this way the accused is offered a benefit. A stay of

proceedings results in no criminal record and the Crown attorney has a 'stick' – non-compliance will result in proceeding with a prosecution.

A second observation is the tendency for the stay rate to increase over time. If we examined all four years prior to FEP, the average stay rate was 35%, varying from a low of 33% (2001-2002) to a high of 38% (1999-2000). In the four years that followed the introduction of the FEP, the average stay rate was 38%, varying from a low of 35% (2004-05) to a high of 40% in (2005-06).

The final consideration of the impact of the FEP on the justice system is to see whether there are any discernible differences in sentencing patterns before and after FEP. Table 8 examines the sentencing pattern for selected years before and after the introduction of FEP.

Table 8 Sentences of Offenders in the Winnipeg Family Violence Court for Selected Years

Sentence*	1999-2000	2001-2002	2003-2004	2005-2006	2007-2008
	N=2087	N=2202	N=1656	N=1378	N=1451
Incarceration at Sentence**	25%	26%	27%	34%	26%
Conditional Sentence	2%	2%	2%	2%	2%
Supervised Probation	33%	26%	19%	22%	18%
Unsupervised Prob.	4%	5%	5%	5%	5%
Fine &/or Restitution	13%	15%	13%	12%	14%
Conditional Discharge	12%	11%	9%	9%	8%
Absolute Discharge	1%	2%	<1%	2%	1%

*Columns add up to greater than 100% due to the frequency of multiple sentences per case, i.e. fine and supervised probation or incarceration followed by 2 years probation.

**In many cases incarceration at sentence includes or is equivalent to the time in custody. For clarity we are using the single measure incarceration at sentence.

Overall, the sentencing pattern before and after the Front End Project does not reveal any dramatic change. However an increase in incarceration from an average of 26% before to an average of 29% after FEP and a decrease in conditional discharges from 12% to 8% suggest a greater severity in sentencing. The magnitude of these changes are consistent with the changing characteristics of the accused and in particular their more severe prior records.

Another change is the reduction in the percentage of offenders sentenced to supervised probation. Further, the past pattern of combining a period of incarceration with on-going probation – 68% in 1999-2000 and 58% in 2001-2002 – seems to have been dramatically reduced after 2003-2004 when the FEP was introduced. In 2007-08, 34% received this combination of incarceration and probation which was half the rate in 1999-2000. It is not clear if there is any connection between changes in sentences of probation and the introduction of the FEP. These changes may result from the fact that since 2004 there has been an overall reduction in programs in corrections for domestic violence offenders. This separate and unrelated (to FEP) development may have an impact on sentencing. This pattern deserves more inquiry, but it falls outside of the parameters of this study.

Despite the above changes and a slight increase in stays of proceedings, most measures of court outcome and sentencing suggest that the efficiencies introduced with the FEP were not at the expense of the FVC's initial goals. The goals of holding offenders accountable, imposing appropriate sentences and exercising flexibility through rehabilitative remands have remained intact despite considerable administrative changes introduced through FEP.

VI. CONCLUSION

Ten years after the introduction of the FEP we find a variety of outcomes – some anticipated and others not. The first goal of the FEP was to reduce the time it took to process a case in the FVC. Overall, we found that the reduction in time for a case to proceed in FVC was greatly dependent on how the case was resolved. There was an average 24% time reduction from first appearance to disposition, however, much of this reduction can be explained by the 33% time reduction in cases

resolved through stays of proceedings. Trial times were not reduced; however, our sample of guilty plea cases did reveal a significant reduction in average time to case disposition for in and out of custody cases. Our key informant interviews revealed that all the court personnel were aware of the problem of the 'front end' of the system adhering to agreed upon timelines. The issue of institutional drift was identified by a number of informants, who also indicated that there was a review of the system underway at the time of the interviews. The proliferation of administrative courts was a matter of concern to the judges and seen as an indicator that timeline violations had become a serious challenge for the courts. In assessing the effectiveness of FEP in achieving its first goal, one would have to conclude that results were mixed.

The second goal of the project was to have a more efficient use of courtrooms by separating courts for administrative matters from courts for substantive matters. The efficiency of this process was articulated in key informant interviews and was evident in the significant reduction of substantive court hearings from first appearance to disposition. Key informants indicated that dockets are of more reasonable size and judges appreciated attending a courtroom that was not distracted by numerous applications for remands. These benefits, however, are balanced against the growth of administrative courts and their increase in volume. In short, requests for remands have not been reduced but the system for responding to these requests has changed.

The third goal of the project was more efficient use of human resources. This appears to be the most successful achievement of the FEP. The extensive use of paralegals in monitoring timelines (pre-trial coordinators) and the expansion of Crown assistant's responsibility in attending the pre-trial coordinators dockets and interacting with defense counsel about adjournments, has increased job satisfaction and liberated a great deal of time for judges and prosecutors to attend to substantive legal matters. One important consequence of the FEP was the development of Crown file ownership. Prosecutors, judges and victim services staff all see this as a significant improvement in the CJS system. The only court personnel unhappy with the new system are the defense lawyers.

Finally, this study also explored the impact of the FEP on court outcomes and sentencing. Court data collected before and after the introduction of the project indicated no significant change in conviction rates and a slight increase in the severity of sentencing which was consistent with the increased severity of prior record charges. Increases

in the percentage of accused who are male and an increase in those who are of Aboriginal origin may also have contributed to the changes in sentencing pattern.

To conclude, public discourse on justice seldom includes discussions of administration, however, this study opened the author's eyes to the fact that administration, like house work, is the invisible scaffold supporting human actions and critical social activities. It is hoped that this study will encourage more inquiry and research into the administration of justice and its role in achieving justice. With regard to the success of the FEP itself, the author suggests that the results have been mixed, however, there are some reasons for optimism. First, the process was under review during the time of this study and our more detailed report informed the review. Secondly, the detailed monitoring of the system by the pre-trial coordinators provides an excellent opportunity for 'mid course corrections'. Some reforms have already been introduced, specifically increasing the senior supervising Crowns in the domestic violence unit to assist in expediting Crown case assignment and rehabilitative remands. Finally, the new culture of work referred to by one judge as "*a culture of collaboration, of discussion*" has contributed to a mindset open to renegotiation and change.

VII. REFERENCES

Bell, M.E., S. Perez, L.A. Goodman, and M.A. Dutton. 2011. "Battered women's perceptions of civil and criminal court helpfulness: the role of court outcome and process." *Violence Against Women* 17 (1): 71-88.

Brzozowski, J. A., A. Taylor-Butts, and S. Johnson. 2006. "Victimization and offending among the Aboriginal population in Canada." *Juristat* 26 (3): 1-31.

Fraehlich, C., and J. Ursel. 2014. "Arresting women: Pro-arrest policies, debates and developments." *Journal of Family Violence* 29 (5): 507-518.

Perreault, S. 2009. "The incarceration of Aboriginal people in adult correctional services." *Juristat* 29 (3): 1-27.

Ursel, J. 1992. "A progress report on the Family Violence Court in Winnipeg." *Manitoba Law Journal* 21: 100-130.

— 2000. "Winnipeg Family Violence Court report." In *Family violence in Canada: A statistical profile 2000*. Statistics Canada. Ottawa: Canadian Centre for Justice Statistics: 45-47.

— 2007. "Over policed and under protected: A question of justice for Aboriginal women." In *Intimate partner violence: Reflections on experience, theory, and policy*, edited by M. Hampton, and N. Gerrard. Toronto, ON: Cormorant Books Inc.: 90-99.

— 2012a. "Domestic violence and problem-solving courts." In *Canadian criminal justice policy: Contemporary perspectives*, edited by K. Ismali, J. Sprott, and K. Varma. Don Mills, ON: Oxford University Press: 160-184.

— 2012b. "The Manitoba Domestic Violence Death Review Committee." Unpublished paper presented at the annual Canadian Sociological Association Conference. Waterloo, Ontario.

Ursel, J., and C. Hagyard. 2008. "The Winnipeg Family Violence Court." In *What's law got to do with it? The law, specialized courts and*

domestic violence in Canada, edited by J. Ursel, L. Tutty, and J. LeMaistre. Toronto, ON: Cormorant Books Inc.: 95-119.