Manitoba's Mental Health Court: A Consumer Perspective

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ABSTRACT

Mental health courts (MHC) have been growing in popularity and use in Canada and elsewhere and are lauded as a humane mechanism to divert those with mental health conditions away from the formal justice system. Research to date has tended to focus on process questions of proper referral and quantitative outcomes of reoffence rather than on feedback from the consumer, the program participant. We report findings from a mixed methods study of mental health court participants (N=20) and use numeric rankings as well as narrative responses to present client perspectives. Findings were generally favourable towards mental health court staff and programming, though some areas were rated higher than others. Feelings of procedural fairness were high, and the use of rewards and sanctions was endorsed. Some concerns about the coercive nature of the program, however, were also expressed by participants.

Keywords: *mental health court, mixed-methods, procedural justice.*

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I. INTRODUCTION

Mental health courts (MHCs) are problem solving courts aimed to divert offenders with mental disorders from custody and have been operating in criminal justice systems world-wide for almost twenty years. While most frequently seen in the United States, MHCs are also operating in Australia, Britain, and Canada.[1] Evidence is accumulating that MHCs reduce days in custody and criminal recidivism, increase access to treatment, and reduce symptoms of mental illness.[2] Critics of mental health courts, however, have expressed grave concerns over the coercive nature of their operation and postulate that their existence merely diverts important forensic resources into a punitive criminal justice system, rather than into the health care system where treatment is more appropriately situated.[3]

Canada has five mental health courts operating in the provinces of Newfoundland, Nova Scotia, New Brunswick, Ontario, and Manitoba[4], but

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1 Richard D Schneider, "Mental Health Courts and Diversion Programs: A Global Survey" (2010) 33:4 Intl J L & Psychiatry 201.

2 Padraic J Burns, Virginia Aldigé Hiday & Bradley Ray, "Effectiveness 2 Years Postexit of a Recently Established Mental Health Court" (2013) 57:2 Am Behav Sci 189 [Burns, Hiday & Ray]; P Ann Dirks-Linhorst & Donald M Linhorst, "Recidivism Outcomes for Suburban Mental Health Court Defendants" (2012) 37:1 Am J Crim Just 76 [Dirks-Linhorst & Linhorst]; Virginia Aldigé Hiday, Bradley Ray & Heathcote W Wales, "Predictors of Mental Health Court Graduation" (2014) 20:2 Psychol Pub Pol'y & L 191 [Aldigé Hiday et al]; Christine M Sarteschi, Michael G Vaughn & Kevin Kim, "Assessing the Effectiveness of Mental Health Courts: A Quantitative Review" (2011) 39:1 J Crim Just 12 [Sarteschi, Vaughn & Kim].

3 H Archibald Kaiser, "Too Good To Be True: Second Thoughts on the Proliferation of Mental Health Courts" (2011) 29:2 Canadian J of Community Mental Health 19 [Kaiser]; *Cf* Dawn Moore, *Criminal Artefacts: Governing Drugs and Users* (Vancouver: UBC Press, 2007) [Moore].

4 Anne E Bain, *The Impact of Therapeutic Jurisprudence: A Critical Study of Toronto's Mental Health Court* (Doctoral Dissertation, University of Michigan Faculty of Social Work and Anthropology, 2013); Mary Ann Campbell et al, "Multidimensional Evaluation of a Mental Health Court: Adherence to the Risk-Need-Responsivity Model" (2015) 39:5 Law & Hum Behav 489; Krista M Davis et al, "A Process Evaluation of Toronto's First Youth Mental Health Court" (2015) 57:2 Can J Corr 159; Quebec, Employment and Social Development Canada, *Mental Health Courts: Processes, Outcomes and Impact on Homelessness*, by Sue-Ann MacDonald et al (Montreal: Université du Montréal, 2014); *Nova Scotia Mental Health Court Report* (Nova Scotia: Provincial Court, 2014).

empirical research on efficacy has been limited and evaluation remains a concern.[5] This paper attempts to expand knowledge of Canadian MHCs generally and explore some of the critiques made of the MHCs punitive and coercive nature by hearing from participants of a relatively new mental health court in Winnipeg, Manitoba. A mixed methods design takes a "consumer perspective" approach that asks participants directly about what works in a mental health court, including their ratings of court and forensic staff, experiences with sanctions and rewards, perceptions of procedural justice, and the voluntary nature of their involvement. Likert ratings are supplemented by narrative qualitative offender responses on their lived experiences within the mental health court program.

II. LITERATURE REVIEW

The first mental health court was established in Broward County, Florida.[6] The primary undertakings for MHCs after identification of mental health difficulties was providing outreach services, mobile crisis teams, home visit groups, and assertive community treatment (ACT) teams. ACT are multidisciplinary teams that work on behalf of their clients to access mental health resources and to follow up on treatment plans. MHCs across North America can be distinguished on the basis of four main features: the charges accepted, the adjudicative model, the sanctions applied, and the source of supervision. Some courts take only cases involving minor offences, other courts take more serious cases. Certain MHCs will give the accused the option of a pre-plea arrangement whereby charges are dropped upon successful completion of the program. Other jurisdictions insist on a guilty plea prior to mental health court admission.[7] Thus, there are significant differences between MHCs, and this should be taken into consideration when attempts are made to generalize about them. Canadian courts appear

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5 Emily Slinger & Ronald Roesch, "Problem-Solving Courts in Canada: A Review and a Call for Empirically-Based Evaluation Methods" (2010) 33:4 Intl J L & Psychiatry 258.

6 Roger A Boothroyd et al, "The Broward Mental Health Court: Process, Outcomes and Service Utilization" (2003) 26:1 Intl J L & Psychiatry 55 at 55-56.

7 Henry J Steadman et al, "From Referral to Disposition: Case Processing in Seven Mental Health Courts" (2005) 23:2 Behav Sci & Law 215 at 225.

willing to take more serious offenders than most American jurisdictions. Canadian courts also appear to achieve, on average, higher retention rates.[8]

Mental health courts have generally been found to at least moderately reduce recidivism and days in custody post-program, two important criminal justice outcomes.[9] Mental health courts have been criticized, however, as detracting from proper treatment of those with mental health conditions who come in contact with the justice system.[10] Canada signed on to the recent *Convention on the Rights of Persons with Disabilities*, ratified in 2010, which signaled a general move away from the medical model of mental illness and towards increasing the rights of those with mental health challenges and reducing stigma.[11] Contrary to this signing, mental health courts are thought to single out individuals with mental health conditions and put them on weekly public display. Rather than diminish stigma, MHCs amplify it by creating a distinct group in a special court setting, which creates an image of the mentally disordered as dangerous. Weekly meetings in front of a judge simply reinforce this shaming. Mental health courts are not without cost and their existence diverts dollars from a civil mental health system that might better serve the needs of those with serious mental health conditions.[12] Outcome studies are thought to focus too much on recidivism and not enough on wellbeing and relief from mental health symptoms. Furthermore, research conducted to-date has not been uniformly positive on reoffence reduction or improved life satisfaction, raising some doubt as to MHC efficacy.[13]

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8 Johsua Watts & Michael Weinrath, "The Winnipeg Mental Health Court: Preliminary Findings on Program Implementation and Criminal Justice Outcomes" (2017) 36:1 Can J of Community Mental Health 65.

9 Burns, Hiday & Ray, *supra* note 2; Dirks-Linhorst & Linhorst, *supra* note 2; Aldigé Hiday et al, *supra* note 2; Sarteschi, Vaughn & Kim, *supra* note 2.

10 Kaiser, *supra* note 3.

11 *Convention on the Rights of Persons with Disabilities*, 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008).

12 Tammy Seltzer, "Mental Health Courts: A Misguided Attempt To Address the Criminal Justice System's Unfair Treatment of People with Mental Illnesses" (2005) 11:4 Psychol Pub Pol'y & L 570 [Seltzer].

13 Lorraine Lim & Andrew Day, "Mental Health Diversion Courts: A Prospective Study of Reoffending and Clinical Outcomes of an Australian Mental Health Court Program" (2016) 55:4 J of Offender Rehabilitation 254.

III. COERCION, PROCEDURAL JUSTICE AND VOLUNTARINESS OF PARTICIPATION

Moore has situated drug courts within the waning ideals of social welfarism and the refocus of the state on a neo-liberal definition of the criminal addict.[14] An addicted person could be viewed as an individual dealing with a physical dependency that leads to crime, and that event could trigger a response and treatment by the healthcare system. Instead, criminal addicts are viewed as choosing to commit crimes, and the drug court is offered as an interdisciplinary strategy that helps the addict, by combining treatment with criminal justice supervision. This is proffered as a benevolent alternative to custody. Moore urges a more critical view of the underlying assumptions of problem solving courts, and consideration of alternative views of helping individuals who come in conflict with the law.[15] Similarly, Seltzer argues that individuals with mental health conditions could be treated by medical professionals, even when their behaviour violates laws. Instead, it is a normative choice by the state to use mental health courts to provide treatment but also criminal justice supervision and sanctions.[16]

An operational criticism centres on the coercive nature of mental health courts. Although programs vary, participants are generally monitored through weekly status hearings in front of a judge, meetings with mental health professionals, and sometimes probation officers. Failure to comply with treatment such as refusing medication, not attending treatment sessions or failing drug screening tests can lead to serious sanctions. Researchers argue that the supposed voluntary nature of enrolment hides the forced nature of participation (i.e., "agree to join the program or go to jail"), or that recruits do not fully understand what is being asked of them.[17] The informality of the court may well mask a lack of due process in ongoing proceedings. Furthermore, US researchers note that because of the

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14 *Supra* note 3.

15 *Ibid.*

16 Seltzer, *supra* note 12.

17 Allison D Redlich et al, "Enrollment in Mental Health Courts: Voluntariness, Knowingness, and Adjudicative Competence" (2010) 34:2 Law & Hum Behav 91 [Redlich, "Enrollment"].

potential sanctions imposed due to non-compliance with treatment or restrictive conditions after a guilty plea, it is imperative that participants' agreement to enter into a contract with the mental health court be "knowing, intelligent and voluntary."[18] A US study found that about half of MHC participants in two courts did not feel that the voluntariness of the program had been explained to them before admission and less than half knew that they could leave.[19] In the end, much responsibility falls on defence counsel to ensure that their clients' comprehension and decisions meet these standards.

Procedural justice research has demonstrated the importance of interpersonal encounters between criminal justice agents, the public, and offenders.[20] Research has found that individuals are less concerned, than is commonly thought, with distributive justice, or the outcomes of criminal justice processes such as receiving a traffic ticket fine, arrest or incarceration. Individuals who come in contact with the criminal justice system tend to be more concerned with how fairly they believe that they were treated by criminal justice agents.[21] Judges, police, and correctional workers have been found to positively influence compliance with the law by showing offenders respect, courtesy, consistent treatment, and a willingness to listen. In the case of mental health courts, investigators have found that, compared to a regular court setting, clients tended to rate MHCs higher on procedural justice principles such as fairness and respect, and lower on perceptions of coercion and punishment.[22] The adherence of MHC judges to procedural justice principles during client court appearances has been found to have a positive impact on client well-being. Research has shown that judges tend to praise more than sanction in status hearings[23] and that a procedurally just

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18 Allison D Redlich & Alicia Summers, "Voluntary, Knowing, and Intelligent Pleas: Understanding the Plea Inquiry" (2012) 18:4 Psychol Pub Pol'y & L 626 at 626 [Redlich, "Voluntary"].

19 Redlich, "Enrollment", *supra* note 17 at 97.

20 Karin A Beijersbergen et al, "Procedural Justice and Prisoners' Mental Health Problems: A Longitudinal Study" (2014) 24:2 Criminal Behaviour and Mental Health 100.

21 Tom R Tyler, "Procedural Justice, Legitimacy, and the Effective Rule of Law" (2003) 30 Crime & Justice 283.

22 Norman G Poythress et al, "Perceived Coercion and Procedural Justice in the Broward Mental Health Court" (2002) 25:5: Intl J L & Psychiatry 517.

23 Kelly Frailing, "How Mental Health Courts Function: Outcomes and Observations" (2010) 33:4 Intl J L & Psychiatry 207 [Frailing].

approach by the judiciary has contributed to reduced mental health symptoms.[24] MHC participants who perceive higher levels of procedural justice tend to see their symptoms improve and are less likely to reoffend[25] and terminate program involvement and are more likely to persist in treatment or graduate.[26]

IV. CANADIAN MENTAL HEALTH COURT RESEARCH AND CONSUMER REPORTS

In Canada, a New Brunswick study assessed participant feedback of 22 mental health court graduates.[27] Overall, clients expressed positive feelings towards the MHC and its staff, they tended to view it as a better experience than regular court, and felt that their mental health had improved during their time in the program. Resentment was expressed by some over the lengthy wait prior to being able to start the program and some felt that they did not need to be in the program for as long as they had. Some believed that court sheriffs could demonstrate a more sensitive attitude towards them when they attended mental health court. At least two clients felt more time could be spent on explanations of expectations and procedures. The majority of feedback, however, was very favourable. Interpretation of results should be done cautiously, however, as the sample consisted of graduates, not drop-outs, introducing selection bias as a caveat.

As noted earlier, the bulk of research on mental health courts is US based, and there is much to learn about the Canadian experience. In our

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24 Sarah Kopelovich et al, "Procedural Justice In Mental Health Courts: Judicial Practices, Participant Perceptions, and Outcomes Related To Mental Health Recovery" (2013) 36:2 Intl J L& Psychiatry 113 [Kopelovich et al]; Heathcote W Wales, Virginia Aldigé Hiday & Bradley Ray, "Procedural Justice and the Mental Health Court Judge's Role in Reducing Recidivism" (2010) 33:4 Intl J L & Psychiatry 265 [Wales et al].

25 Christina Pratt et al, "Predictors of Criminal Justice Outcomes Among Mental Health Courts Participants: The Role of Perceived Coercion and Subjective Mental Health Recovery" (2013) 12:2 Intl J of Forensic Mental Health 116.

26 Kelli E Canada & Virginia Aldige Hiday, "Procedural Justice in Mental Health Court: an Investigation of the Relation of Perception of Procedural Justice to Non-adherence and Termination" (2014) 25:3 The J of Forensic Psychiatry & Psychology 321 [Canada & Hiday].

27 Stephani Lane & Mary Ann Campbell, *Representing the Client Perspective of the Saint John Mental Health Court* (Honours Thesis, University of New Brunswick, 2009) [Lane & Campbell].

study, using data from the Manitoba mental health court, we propose to explore several important issues raised in the literature, using a consumer perspective to identify how MHC clients perceive the program. Participant ideas about the efficacy of various mental health court features, their perceptions of coercion and voluntariness in the program, and finally, their opinions on procedurally just behaviours exhibited (or not) by MHC court and treatment teams are all vital areas for policy makers to consider.

V. PROGRAM OVERVIEW

The Winnipeg mental health court was established in 2012 and emphasizes a therapeutic justice (problem-solving) approach; its local predecessors were the Winnipeg drug court and the Winnipeg family violence court. Significantly, the judge who led the MHC court team for much of the first two years of operation took on a leadership role in 2006 for Winnipeg's drug court; his experience was reported to be invaluable, particularly in the early stages. The program operates as a post plea second generation court, meaning that offenders must voluntarily plead guilty to obtain services and supervision of offenders is a collective effort by mental health and criminal justice system actors.[28] Like other MHCs, potential candidates for the Winnipeg program can be referred from both defence counsel and crown, corrections staff, and police, as well as health care facilities. The program excludes offenders facing sex charges, serious assaults, home invasions or criminal organization (gang or organized crime) offences, and they must not be gang members. Past gang or sex crime charges might also restrict entry. Candidate referrals must have a serious mental health condition such as schizophrenia, bi-polar disorder, or a mood disorder. A committee of crown prosecutors vet the initial application and, if approved, it is referred to the Forensic Assertive Community Treatment (FACT) team to verify an Axis I diagnosis and assess risk. They strive for a thirty day assessment period, or sooner. Clients can be accepted as Track I or II. Track I cases are placed under a recognizance with conditions pertaining to MHC participation. Track I cases may have charges stayed if successful, while Track II will usually receive a probationary disposition when they complete the program. Clients are expected to spend 18-24 months in the program, whereupon compliance leads to graduation.

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[28] Redlich, "Enrollment", *supra* note 17.

The Winnipeg MHC court team consists of a judge, crown, defence counsel (Legal Aid supplied), and members of the Forensic Assertive Community Treatment team. The FACT team is made up of one manager, four service providers, a part-time psychiatrist, and an administrative support staff. The court team meets weekly and participants attend court weekly (or less as they progress). The FACT team provides help finding housing, teaching life skills, coping strategies, scheduling of daily routines, assists in financial management, and medication management. The psychiatrist plays a lead role in helping determine appropriate dosage, in consultation with the participant, and other members of the FACT team. Medication compliance is expected. The Winnipeg MHC shares the task of supervision between health and justice team members by core competencies.

Incentives for treatment participation and program compliance include praise from the judge and FACT team, lowered court appearance requirements, reduced curfew restrictions and/or, elimination of urinalysis tests. During our research, some of the sanctions applied for misconduct such as missing meetings, not participating in treatment, or failing drug tests were censure from the judge at a weekly hearing, an increase in reporting, a curfew, and community work service. Custody was used as a sanction in only one reported case for non-compliance during the first two years of the program that we were able to confirm. Anecdotally, the judge did use the "threat" of custody as a sanction for non-compliant cases, but these incidents were not tracked.[29]

VI. METHOD

As part of a process and preliminary program evaluation, we surveyed 20 mental health court participants. Our first instrument was a general 37 item questionnaire derived from prior research,[30] and we supplemented this with several open-ended questions we developed ourselves. This allowed us to mix quantitative with qualitative analysis of our consumer reports. We

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[29] Here, we do not define use of custody as a sanction in situations where a client had absconded and an arrest warrant had to be issued for non-appearance in court. In these cases, incarceration was not really applied as a sanction for lack of program adherence, but rather used to enforce serious breaches of the court recognizance.

[30] Merith Cosden et al, "Consumers' Perspectives on Successful and Unsuccessful Experiences in a Drug Treatment Court" (2010) 45:2 Substance Use & Misuse 1033.

have five program dimensions rated on a Likert scale, described below. We also requested participants provide Likert ratings on procedural justice in the operation of the program (12 questions), and then also asked two questions assessing perceptions of voluntary program involvement.

The four program features that we touched on included:

Helpfulness: participant opinion was sought on the utility of 14 items which include improving mental health, reducing criminal activity, improving relations with the criminal justice system, staying in treatment, improving relationships, assistance in work, education, finances, housing, accessing community housing, getting drug treatment, improving quality of life, and managing medication (if applicable).

Effectiveness of Program Features: eight questions asked participants to rank the effectiveness of key mental health court features such as interactions with the judge, encouragement to tell the truth, collaboration between court, and treatment teams, being accountable, medication assistance, help from treatment staff, access to a psychiatrist, and use of drug testing (note: only MHC clients with an identified substance abuse problem were subject to urinalysis).

Reward and Sanctions Effectiveness: ten items centred on client perceptions of reward (2 questions) and sanction (8 questions) efficacy. Rewards in the MHC were limited to verbal praise from the judge or treatment team. Evaluations of sanctions included judicial reprimands in open court, adding of curfews, community work, or treatment because of failures to comply with a treatment plan. More severe sanctions were also featured such as the requirement of residential treatment, a warrant issued for not attending court, threat of expulsion, and the possibility of a short term of incarceration for non-compliance.

General Feelings about the Mental Health Court Program: five questions asked participants to rate different aspects of the program, such as feeling involved in their treatment plan, noticing life improvements, feeling safe in the program, and a reversal question, whether or not time in the MHC felt more like punishment than treatment. The procedural justice questionnaire had been utilized by the research team in previous drug court evaluations, based largely on a popular instrument developed for drug court research.[31]

The qualitative portion of our study was comprised of seven open-ended questions. The first two concerned current circumstances around

[31] Denise C Gottfredson et al, "How Drug Treatment Courts Work: An Analysis of Mediators" (2007) 44:1 J Res Crime & Del 3.

personal activity (how are you spending your days? (e.g., work, volunteering, attending school)) and health (how is your physical health?). The other questions explored areas such as how staff might be of help (how can the Mental Health Court staff best help you to avoid future problems with the law?), perceived advantages or disadvantages, if any, of the mental health court compared to traditional court and motivation to enter the MHC (why did you decide to enter the Mental Health Court program?).

VII. PROCEDURE

Our study was approved by both the University of Winnipeg Research and Ethics Board and the Winnipeg Regional Health Authority (WRHA) Research and Ethics Committee. Our initial study group consisted of 34 cases either currently or previously with the Winnipeg MHC; of these 20 completed surveys, only 6 formally declined, 3 left the program while the study was ongoing, and the other 5 were difficult to contact, missed appointments or had problems with scheduling. Because of the vulnerable nature of this target group, we went to significant lengths to ensure consent was informed and voluntary. First, Winnipeg mental health court staff advised their clients informally about our study, then we met with a large group after a court session one day and gave an overview of our research. MHC staff then referred clients interested in our study to a meeting with us at the FACT office. We reviewed the study again one on one with individuals who met with us, assuring them of confidentiality, that they did not have to participate unless they wished to, they could refuse to answer some questions if they desired, could leave at any time, or withdraw later if they changed their mind. Participants had to sign two informed consent documents, one approved by the University of Winnipeg, the other required by the WRHA. Interviews were conducted in private rooms at the FACT office. We had originally intended to pretest the questionnaires and then modify as necessary; however, there were no problems encountered in administration so we analyzed all surveys completed. Open-ended responses were transcribed verbatim by the interviewer and then reviewed for emergent themes.

The 20 participants ranged from 19-63 years of age (mean=37.6), 16 out of 20 were male, 70% were white (20% were Indigenous), and 80% were single. Most had an education of grade 11 or higher (75%) and a third reported being employed full time or part time. About half were on Track I

status (charges might be stayed). Forty percent (40%) of clients were dealing with schizophrenia, 30% were bipolar and the rest managed some form of depression. Surprisingly, 15 of 20 (75%) participants had been placed in the MHC for a violent offence conviction.[32] The average time in program was 250 days. There was only one graduate at the time of the study.

VIII. STUDY FINDINGS

Mental health court clients reported spending their days in mostly constructive activities, or at least looking for things to engage in. Getting clients active is a targeted area for the FACT team. Clients reported involvement in treatment programs, association with their families, volunteering with community groups, and working. While some clients managed to be very busy, others struggled.

> "I just finished school and am planning to return in February. I am currently volunteering at a coffee shop to help out and keep myself busy. Not only do I try to see my daughter a lot but I'm also trying to be a better parent, so started taking a parent and addiction course. I also try to attend regular AA meetings 5-6 times a week."

> "Currently I am a couch potato. However, I need to start looking for some sort of volunteering or part time work"

Overall, participants appreciated support from their FACT workers but some resented what they viewed as a coercive mandate to be active.

> "The program kind of killed my social life, I used to see my friends a lot but now I just hang out at home. I live across the city so it's hard for me to commute to the program, the travel time alone takes up a big chunk of my day. I'm in night school and looking for a part time job. I also am in the process in applying to Red River to attempt to get my red seal."

> "Being on a full curfew doesn't really let me do anything, someone always knows where I am and I only go out when I'm forced to go to volunteer or go to the main office."

Likert ratings ranged from 1 to 5, with 1 being "very unhelpful," and 5 being "very helpful." Another way to think about these average scores is to convert them to a score out of a 100, a percentage. So, a 4.0 out of 5 would

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[32] This subsample is quite similar to the over-all sample of 35 that was part of our larger Winnipeg mental health court study. The high number of violent crimes referred reflects a willingness on the part of the court to take on serious cases, and likely improves the ability of the MHC to lower custody rates in Manitoba.

be multiplied by 20 to become 80%, a 4.5 becomes 90% and so on. How to rank? There is always a certain amount of arbitrariness to Likert rankings, but ratings over 90% are high in any metric, and over 80% is still quite good. Conversely, rankings below 50% would suggest significant dissatisfaction with mental health court service.

Study participants (Table 1) rated the mental health court most highly in helping to improve mental health, staying in treatment, improving their quality of life, managing medication, and referral to community programs (4.4 - 4.8, or 88% - 96% approval). Lower but still quite positive ratings were observed for MHC aid to participants in reducing criminal activity, improving relationships with friends, getting educational counselling, and financial assistance (4.0 – 4.1, or 80% to 82% rank). Ratings for other items were still over 3.5 or higher (70%). Lower but still positive ratings were noted for improving relations with criminal justice system members or family, and assistance in getting housing or getting drug treatment (if applicable). Thus, the MHC appeared to be perceived as being more successful in providing help in its core traditional areas like reducing recidivism, program referrals, providing treatment, and medication, and improving mental health. Relationships are part of MHC team member responsibilities but are not core functions. That they were not rated quite as high for housing is not surprising; finding housing for low income individuals in Winnipeg is a significant challenge and FACT staff expressed concern about the amount of time that they had to spend trying to arrange accommodation, as it took away from other duties.[33]

Responses to open-ended questions tended to confirm survey responses. Respondents were intent on trying to improve their lives. They mostly report entering the mental health court to avoid incarceration, but other reasons were also provided. Improving personal health, strengthening relations with family, and trying to improve overall well-being were also cited as important motivators.

> "I entered the MHC to improve my quality of life and really make it a lot better. My main focus is being able to improve my health so I can successfully raise my

[33] For a collection of recent analyses on the dire state of Winnipeg's available low income housing, (particularly with respect to Winnipeg's inner city area, where most of the MHC clients resided) see Canadian Centre for Policy Alternatives-Manitoba, *Rising Rents, Condo Conversions, and Winnipeg's Inner City,* (Winnipeg: CCPA, 2012).

> daughter. Essentially, the MHC seemed like the best option for me because I did not want to go into custody."

> "I found out about the program through my defence counsel. I got into the program to help my life and make it better. I was on probation and I ended up breaching the conditions so I would have been facing jail time if it was not for this program

MHC clients generally found the program quite helpful (Table 2). Ratings were particularly high for having access to a psychiatrist (4.7, or 94%). Perhaps most importantly, participants rated the core feature of the mental health court, the court and treatment teams working together, as a most effective feature (4.7, 94%). Other key MHC components such as interaction with the judge, being encouraged to tell the truth, being accountable for their behaviour (from weekly status appearances in court) were also strongly endorsed, with averages ranging from 4.3 - 4.4. Treatment staff providing access to programs was similarly ranked high (4.3). Some of the more coercive elements of the program were still ranked favourably but not as high – drug testing was rated a 4.0 while having help with medication was ranked at 3.9. Proctors check up on some clients to ensure that they take medication in the evenings. We were told informally that such "help" was not always appreciated by clients, but some valued the assistance with medication.

Open ended responses were generally effusive over the judge and program staff. Participants perceived a sincere support being offered by MHC staff.

> "The people in the program help me out a lot, they have explained my mental health issues thoroughly, and they give me lots of support and counselling. Also, having to come into the program and face case managers and the court team holds me very accountable to make sure I'm not drifting back into bad things. The meetings with the judge are good because I feel like he is on my side. It's also great to have the possibility of getting out of jail."

> "I got arrested because I have really bad anger problems that I could not control. The people at the mental health court helped me avoid future problems with the law by going through a year of Dialectical Behaviour Treatment, which gave me the skills I needed to deal with my problems. The staff also help me avoid the justice system by helping me regulate my medication."

Rewards were rated as more effective than sanctions by the study group (Table 3). Verbal praise from either the judge or FACT staff was viewed as very effective (4.8, or 96% satisfaction). The mean ratings on sanctions like

a judicial reprimand or a short jail term were not as positive, dropping down to a range of 3.9 to 4.1, or 78% - 82%, but this approval is still relatively high. Most MHC clients perceived possible sanctions as an effective deterrent. Some respondents, however, voiced considerable displeasure over the possibility of jail as a looming consequence:

> "I do not like the threat of jail in this program. I do not think it's necessary in my case because I am motivated to engage in treatment."

Perceptions of procedural justice were extremely high (4.5-4.9), with one exception. Participants felt the judge treated them fairly and with respect, listened, considered the facts, and treated people equally. Likewise, they felt that case managers were respectful and provided accurate information. The one exemption was "you or your lawyer have a chance to tell your side of the story," which rated a 3.9 or 78%, still not a negative but not extremely positive. In our three visits to the court we observed most MHC clients as being fairly passive and quiet in conversation with the judge. Because of the limited time (usually an hour) available in court, we noted the judge, in most cases, did not spend any significant length of time chatting with the client, unless there was an issue or an unusual event since the last status hearing.[34]

Some of the open-ended responses involved concerns about consistency in treatment, one of the nuanced features of procedural justice. Consistency in the application of rules and sanctions is an aspect of procedural justice that is difficult to always reconcile with individualized treatment. Thus, while individuals expect to be heard and have their personal situation and circumstances appreciated as part of procedurally just treatment, they may not approve of considerations given to others, which ends up construed as arbitrary treatment. Individualized treatment

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[34] Curiously, we had been involved in evaluating the Winnipeg drug treatment court (DTC) for a number of years and found a similar pattern in ratings. We surveyed drug court graduates with the identical procedural justice scale over seven years. Responses were also very positive and judges were rated highly, but the question about 'telling their side' invariably brought on the lowest rating. While we would not call either the MHC or DTC 'assembly line' in their courtroom service delivery, it does illustrate that problem-solving courts have some limitations in their ability to engage clients. See Justice Research Institute, *Winnipeg Drug Treatment Court Program Evaluation for Calendar Year 2014,* by Michael Weinrath & Joshua Watts (Winnipeg: University of Winnipeg, 2015).

promoted by problem-solving courts can sometimes be perceived as overly lenient by peers.

> "There are other people in this program who get caught over and over and they never get consequences. It reinforces that bad behaviour is okay for the rest of us."

> "I think the program is great but it could put up with less crap and do a better job about filtering out some of the people who aren't as involved in their treatment programs."

When asked "Did anyone explain to you that you could have your case heard in regular court OR mental health court, it was your choice?" three of our twenty respondents (15%) felt that the voluntary nature of participation had not been explained prior to entering the program. Of those three, two were not sure when it was explained to them, and one never felt it had been adequately outlined. In our court observations, the prosecutor, defence counsel, and the judge went to great lengths to review the MHC agreement and its voluntary nature, often stopping during their explanations to ask 'do you understand?' and not proceeding until the client had said yes or at least nodded expressively. However, we did not attend all MHC admission hearings so it could be that more effort was made when researchers were in attendance. In addition, open court can be quite intimidating and clients may have agreed without listening carefully to terms and conditions that were discussed. One respondent was quite explicit in his feelings that he was coerced into a guilty plea.

> "I do not like the time constraints and I really didn't like the fact that I had to plead guilty when I was not fully responsible for my crime. The system is messed up to the point that this is the best way for me to get help for my mental illness."

This participants' comment raises two issues. First, the respondent's view suggests that court room observation is not always a helpful method of assessing voluntariness; it is likely that a guilty plea had been forced and agreed to long before a sentencing hearing. Secondly, the feeling that the only way to get treatment is to enter the criminal justice system via the mental health court only reaffirms criticisms that resources should be diverted into forensic health, not the criminal justice system. Limiting forensic treatment, paradoxically, only seems to be encouraging crime, not preventing it.

Consistent with other Likert responses reported above, questions eliciting overall satisfaction ratings were positive – involvement in their treatment plan, observing life improvements, treatment team competence

ratings ranged from 4.4 - 4.6 agreement (Table 5). Significantly, participants reported very high feelings of safety (4.8 or 96%) in the MHC program. A reversal question (to confirm clients were reading carefully rather than checking off the same box) asking if mental health court 'felt more like punishment than treatment' garnered a 2.6, indicating disagreement. Thought of another way, the reverse coding would be a mean of 4.4 or 88%, an indication that the program felt more like treatment than punishment.

General open-ended feedback was also positive about the MHC program and its court and treatment staff. When asked about complaints or concerns, however, a few participants had issues with program structure and requirements, finding reporting and curfews unnecessarily invasive. The coercive aspects of the program were prominent in their remarks.

> "The only problem I have with the program is that it takes way too much time; I don't like having to come to court once a week and having to attend the case manager's office twice a week."

> "Appearances in court last summer were too intensive and demanding. I was attending a course at work last summer and the demands at court resulted in me not doing very well. Also I liked the old MHC location more, this one is very inconvenient, maybe the MHC staff would benefit from mobile house visits."

> "The MHC is way too time consuming, it is a little annoying having to go to court every week. The program also makes it hard for me to hang out with my friends as it is a lot more restrictive than regular probation."

These comments illustrate that at a certain point, the surveillance/reporting demands of the MHC begin to interfere with day to day activities for purposes not always clear. At least one client found it more, not less onerous than the criminal justice system's probation regime.

IX. DISCUSSION

The Winnipeg mental health court generally received very high ratings from participants who believed the program helped them along a number of dimensions including core goals of improving mental health and reduction of the criminal activity. Program components of status hearing interaction with the judge, accountability, and access to treatment resources were likewise considered important. Overall satisfaction was high in areas such as personal improvement, involvement in treatment planning,

performance of the treatment team, feelings of safety, and perceptions of a therapeutic environment (as opposed to punishment). Like much of what is found in the extant research, clients were very positive towards the MHC program.[35]

Similar to other research, participants rated both rewards and sanctions as being effective parts of the MHC.[36] While rewards were ranked as more effective, sanctions such as curfews, punishments like work service or expulsion for non-compliance were generally viewed as fair by the vast majority of respondents.

On the other hand, our open-ended questions did elicit complaints about some of the more arduous features of the MHC. Curfews, length of time in the program, reporting to counselors, and the threat of jail did not sit well with some. The individual program plans tailored to individuals sometimes annoyed clients who felt a few of their peers did not work hard at their program but were still treated leniently. Yet despite these comments, mean ratings in our Likert scales showed that on the balance, participants valued their involvement in the MHC.

Procedural justice scores rated the highest of any of our scales; elevated ratings are quite common in related research.[37] The judge, court, and treatment teams were ranked highly when it came to providing assistance and were considered "procedurally just" in conducting their duties of: being fair, considering the facts, showing respect, treating individuals with dignity, and (for the most part) listening. These findings auger well in the long term for the Winnipeg program, given the positive outcomes such as completion, mental health improvement, and less recidivism associated with perceptions of procedural justice in past research. While there were three individuals who did not feel that they were adequately apprised of the voluntary nature of the program and some concerns were expressed about being coerced into a guilty plea, there was nothing close to the 50% "misinformed" threshold that was observed in another US study.[38]

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35 Kelli E Canada & Alana J Gunn, "What Factors Work in Mental Health Court?: A Consumer Perspective" (2013) 52:5 J Offender Rehabilitation 311 [Canada & Gunn]; Frailing, *supra* note 23; Lane & Campbell, *supra* note 27.

36 Canada & Gunn, *supra* note 35.

37 Kopelovich et al, *supra* note 24; Wales et al, *supra* note 24; Canada & Hiday, *supra* note 26.

38 Redlich, "Voluntary", *supra* note 18.

Findings generally support the operations of the Winnipeg mental health court. There are, however, considerable resources required to operate the MHC and pressures placed on those with mental health concerns must be carefully considered. Thus, we still feel that some of the more critical consumer reports by our respondents should be considered. Defence counsel in particular and the court team as a whole need to engage in stronger efforts to ensure clients appreciate the burdensome consequences of pleading guilty and entering into a mental health court program. Their option to leave the program and be sentenced (albeit facing a potentially punitive alternative) should be related from time to time by defence counsel. Pre-plea programs, whereby an offender does not plead guilty to enter the MHC, or even diversion at the police level are other options that limit the more coercive aspects of justice system involvement, but ensure treatment for those with mental health problems.

Our small sample limits the generalizability of our findings, as does the newness of the Winnipeg mental health court. Participants who talked to us may have been self-selected and biased towards the program. Most had not finished the program and their judgements may have been premature. Thus, although complaints about the coerciveness of the program were few, they may have been under-represented. Certainly, commentary around the length of the program, the administrative meetings with counselors, and their interference with day to day activities harken to Moore's (2007) cautions about the normative assumptions embedded in MHC operation.[39] Because it is an alternative to jail, administrative inconvenience and lengthier program involvement than is necessary are both justifiable because they are preferable to a prison term. Rather than consider what the client needs and provide it, the MHC

s require things that are justifiable in a criminal justice context, but not in a truly therapeutic one.

We feel our exploratory study makes a modest contribution to the Canadian mental health court literature, and feel that the consistency of our findings with other research provides support for our results. Future research should examine larger samples and might involve a more prospective study with regards to voluntary entrance into the mental health court. Observing and/or interviewing clients and court staff at various stages of referral and admission (rather than retrospective memory) will provide

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[39] *Supra* note 3.

better insight into actions and decisions by participants and court members. Contrasting criminal justice requirements with therapeutic ones will help researchers keep their analysis balanced. While the use of official records and the opinions of program staff are important, to get a more complete picture, research should continue to engage clients in consumer reports.

Table 1: Perceived Helpfulness of the Mental Health Court in Improving Personal Circumstances

How helpful was the MHC in ...	MEAN
Improve mental health?	4.6
Reducing criminal activity?	4.1
Improve relationships with CJS members?	3.7
Helping to stay in treatment?	4.7
Improving relationships with family?	3.5
Improving relationships with friends?	4.0
Assistance in maintaining a job?	3.5
Getting educational counseling?	4.0
Getting financial assistance?	4.0
Improving quality of life?	4.7
Managing my medication (if applicable)?	4.8
Getting housing	3.9
Being referred to community programs?	4.4
Getting drug treatment (if applicable)?	3.8

Table 2: Perceived Helpfulness of Program Components

How helpful were the following parts of the MHC?	*Mean*
Interaction with Judge?	44.4
Being encouraged to tell the truth?	44.3
The court and treatment teams working together?	44.7
Being held accountable for my behaviour?	44.4
Someone assisting me with my medication?	33.9
Having treatment staff help me to access treatment programs?	44.3
Having access to a psychiatrist?	44.7
Drug testing?	44.0

Table 3: Perceived Effectiveness of Rewards & Sanctions

How would you rate the effectiveness of...	
Verbal praise from the judge?	4.8
Verbal praise from MHC staff?	4.8
Getting reprimand from judge in court for not following treatment plan?	4.1
The court adding curfew for not following my treatment plan?	4.0
Requiring community service for not following treatment plan?	4.2
Mandating or increasing attendance at self-help groups for not following treatment plan?	4.0
Attendance at residential treatment programs because of addiction problem?	4.0
The court likely issuing a warrant for my arrest for not following my treatment plan?	3.9
The court warning me I might be kicked out of the program for not following my treatment plan?	4.1
The court possibly putting me in jail for a few days for not following my treatment plan?	4.1

Table 4: Perceptions of Procedural Justice

Overall, how much do you agree or disagree with the following statements?	
Did you or your lawyer have a chance to tell your side of the story when you came to mental health court?	3.9
Did the judge listen to what you or your lawyer said when you came to mental health court?	4.7
Did the judge rely on reports from your case manager at the court hearings?	4.9
Was the information the judge had on your treatment participation and any illicit drug test accurate?	4.9
Did the judge try to consider all the facts in your circumstances?	4.6
Did the judge apply the rules about going to mental health court the same way for you as for the other defendants?	4.5
Did the judge follow the same rules every time about what would happen if you did not participate in treatment?	4.7
Were you treated politely and with respect by the judge?	4.9
Were you treated politely and with respect by your case manager?	4.9
Did you trust the judge to be fair to you in the hearings?	4.8

Table 5: Overall Satisfaction with the Mental Health Court[40]

How much do you agree or disagree with the following statements?	
I am very involved with my treatment plan	4.6
I have noticed improvements in my everyday life since attending the MHC	4.4
I rate the performance of the treatment team very highly	4.6
I feel safe in the MHC program	4.8
My time in the MHC has felt more like punishment than treatment	2.6

[40] Kelli E Canada & Alana J Gunn, "What factors work in mental health court? A consumer perspective" (2013) 52 J of Offender Rehabilitation 311; Kelli E Canada & Virginia Aldige Hiday, "Procedural justice in mental health court: an investigation of the relation of perception of procedural justice to non-adherence and termination" (2014) 25:3 The J of Forensic Psychiatry & Psychology 321.