Problem-solving courts in Canada: A review and a call for empirically-based evaluation methods

Emily Slinger, Ronald Roesch *
Simon Fraser University, Canada

ABSTRACT

While problem-solving courts may soon become permanent fixtures within the criminal justice system in Canada, little is actually known of their effectiveness in dealing with crime. The current paper will review the fundamental basis for these court models, with special attention on their arrival in Canada. The focus will be on three particular forms of problem-solving courts — mental health court, drug treatment court and community court — due in large part to the availability of literature. Existing evaluations, both process and outcome, of both the Canadian and American models will be discussed and their inadequacies addressed. It is hoped that this article will serve to dispel myths surrounding the ethical application of random assignment when evaluating these court systems. Through the application of experimental methodology, evaluations may finally be able to address the issue of whether these court systems are effective alternatives to the traditional criminal justice stream.

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1. Introduction

Located in the epicenter of Vancouver’s infamous downtown eastside, known for its concentration of drug abuse and mental illness, is the first ever Canadian Community Court. Community courts are said to differ from other models based on their use of community businesses, schools, social service agencies and residents as stakeholders in the courtroom process (Center for Court Innovation, 2009a). With this widening of court participants, such court systems hope to better the community at large in addition to helping each offender. With the establishment of the Vancouver Community Court came the promise of change and the hope of improved conditions for this impoverished community. Although some hold high hopes for this new court system, its development has led others to question the effectiveness of similarly constructed problem-solving courts across Canada. With little empirical evidence to support their effectiveness in other jurisdictions, it is essential that the current evaluations procedures employed by problem-solving courts be thoroughly scrutinized.

This article will highlight the lack of and need for more empirically-based program evaluations. After providing some background into the appearance of problem-solving court models in Canada, we will review the evaluations these models have thus far employed. Issues with the current evaluations will be discussed, followed by suggestions for future research.

2. Guiding principles

Problem-solving courts are specialized court systems that deal with different types of quality-of-life crimes and the individual problems of those who commit such crimes. There are a wide range of problem-solving court models, from domestic violence courts to mental health courts. Overall, these models offer a collaborative and individualized approach that differs from the traditional criminal justice system.

The problem-solving court phenomenon stems from the recognition that criminality does not always lie with individual choice but may in fact reflect deplorable social situations (Winick, 2003). These specialized courts seek to address the root cause of criminal behavior rather than superficially dealing with a symptom of some deep underlying issue (Reiksts, 2008). Based on the principles of both Therapeutic Jurisprudence and Restorative Justice, these new court systems shed the traditional adversarial court model in favor of a more rehabilitative approach to justice (Schneider, Bloom, & Heerema, 2007; Wexler & Winick, 1992; Winick, Wexler, & Dauer, 1999). Due to the limited existence of these courts in Canada in comparison with the United States, the focus for the purposes of the present article will be on three specific kinds of problem-solving courts: community, mental health and drug courts. As mentioned above, community courts were established as a way of uniting the justice system with the community with which it serves. With the knowledge that certain troubled communities breed increased rates
of crime, community courts seek to rehabilitate the offender through the betterment of their community. In a review of the Red Hook Community Court, Flynn (2005) highlighted the guiding principles of such a court system: crime negatively affects the community, sentences should be aimed at improving the community and finally, both community restoration and psychosocial interventions, such as drug treatment and job training, should be the focus when attempting to appropriately punish an offender. Emphasizing the community component of these systems, a report examining the Hartford Community Court model found that 80% of the current court sanctions involved some form of community service within one of 17 different Hartford neighborhoods (Goldkamp, Weiland, & Irons-Guyrn, 2001).

Ultimately the hope is that this community involvement serves as both a deterrent to offenders and a much needed help to local business and community centers, and ultimately sets this type of court system apart from other problem-solving court models (Center for Court Innovation, 2009a). Community courts also seek to expedite typical court proceedings in order to ensure whichever sentence is delivered is carried out with a sense of immediacy. The Midtown Community Court in New York City, the first to appear in North America, ensures that all consequences will begin within 24 hours of the offender’s appearance before the judge (Center for Court Innovation, 2009b).

In sum, this form of problem-solving court differs from others in the central focus on the community and their ability to deal with a greater variety of offenders, not just those suffering from mental illness or drug addiction.

With roots in the deinstitutionalization phenomenon of the 1960s, mental health courts were established based on the over-population of mentally ill offenders within the criminal justice system and the recognition that the traditional system is not appropriately dealing with such offenders. With lengthy wait lists for mental health evaluations and a shortage of hospital beds for those in need of treatment (Picard, 2008), the mental health needs of this population have not been met. Without community treatment alternatives, many have simply found themselves in the prongs of the criminal justice system (Roesch, 1995). Mental health courts seek to break the cycle of mentally ill offenders who continually transition from hospital emergency rooms to criminal justice courtrooms (Winick, 2003). As soon as an offender is accepted into the mental health court, treatment is often the first priority (Poythress, Petrilia, McGaha, & Boothroyd, 2002). Also, the costs to incarcerate mentally ill inmates is nearly two times that of non-mentally ill offenders (James, 2006), thus pulling tremendously on governmental purse strings. Mental health courts offer an alternative to jail or prison, thus eliminating some, if not most, of the additional costs accrued from incarcerating a mentally ill offender. Since their original inception, recent estimates suggest 150 courts are now in existence across the United States (Redlich et al., 2010).

Finally, drug courts developed as a potential solution to the revolving door pattern of offending that can be seen with drug addicted offenders. In order to break this cycle and avoid the use of jail as a sanction, drug courts impose mandatory drug treatment in conjunction with frequent testing to ensure continued adherence to the program. By treating the addiction, it is hoped that the resultant criminal activity is either eliminated or significantly reduced. This model was the first to emerge and is by far the most prevalent form of problem-solving court in the United States (Tyse & Linhorst, 2005). The first drug court, in Dade County, Florida, was developed in response to the increasing levels of felony drug charges throughout the area. Soon thereafter and following governmental incentives and funding initiatives, recent estimates have placed the number of existing drug treatment court models at approximately 1600 across the US (Werb et al., 2007).

### 3. History of arrival in Canada

The first ever problem-solving courts in Canada appeared in 1998. In the same year, Toronto, Ontario established both a mental health court and drug treatment court. The mental health court opened soon after the Ontario government officially recognized the prevalence of mental illness within its court system. In 1994, the government passed a bill entitled the Diversion of Mentally Disordered Accused after which diversion programs targeting mentally ill offenders became standard procedure across the province. The diversion programs set the stage for the implementation of the first mental health court in the country, and now work in conjunction with this specialized court docket (Schneider et al., 2007). This mental health court sparked the conception of other mental health courts across Canada, but to this day remains the only full-time mental health court in the country.

The first ever drug court to appear in Canada was established in Toronto and was largely based on the popularity of such court models in the United States. The Toronto Drug Treatment Court (TDTC) sought out to deal with non-violent offenders addicted to cocaine or other opiates (Public Safety Canada, 2008). The TDTC involves the cooperation of the justice system with addiction treatment services through the Center of Addiction and Mental Health (CAMH).

Since the original inception of these specialized court systems in Toronto, various provinces implemented similar programs largely based on their apparent success. In terms of mental health courts, Saint John, New Brunswick established the second in Canada following a pilot project that began in November 2000. While this particular court only sits every other Friday, since its inception it has accepted upwards of 115 cases (Provincial Court of New Brunswick, 2004). Similarly, in 2006 Ottawa received a mental health court, which now sits three days a week and had overseen more than 150 cases as of February 2007. Kitchener, Sudbury, Winnipeg, and Halifax are other jurisdictions that have established, or are in the process of establishing pilot programs involving mental health courts. Programs are also being implemented for youth, with both Ottawa and London implementing youth mental health court models. With similar goals as the traditional mental health courts, the youth model attempts to intervene early in hopes of preventing adulthood criminality. In an address during the Youth Mental Health Court Forum, Dr. Simon Davidson, Chief of Child Psychiatry at the Children’s Hospital of Eastern Ontario, noted that 75% of those who end up in the youth justice system have a diagnosable mental illness (2008, November). In lieu of such findings and with reluctance to bring these youth through the adult mental health court system and subsequently losing the ability to utilize YCJA, the Youth Criminal Justice Act courts have slowly began to emerge in Canada.

As part of Canada’s Drug Strategy, a similar process of diffusion across Canada can be seen with drug treatment courts which can now be found in Vancouver, Edmonton, Regina, Winnipeg and Ottawa. The Vancouver Drug Treatment Court (VDTC) was developed in between 2001 and 2005, and seeks to reduce heroin and cocaine use in offenders charged with what are deemed to be substance motivated offences (Public Safety Canada, 2009). Similarly, the Edmonton Drug Treatment and Community Restoration Court (EDT CRC) formally commenced in December 2005, and seeks to eliminate, or vastly reduce recidivism in substance addicted populations of offenders. In 2006, Regina, Winnipeg, and Ottawa also saw the development of their own specialized court docket for addicted offenders. According to the Government of Canada website, all of the aforementioned drug treatment courts in Canada were established based on the estimated 9 billion dollars annually wasted on the arrest, prosecution, and incarceration of such offenders (Department of Justice, 2005).

Finally, the Downtown Community Court in Vancouver opened its doors in September 2008 as Canada’s first community court. In 2004, the BC Justice Review Task Force began a search for a solution to the problem of chronic re-offending in the community. The Attorney General of British Columbia assigned a community-based team of judges, lawyers, police officers and social service providers, the “Working Group”, the job of identifying potential solutions to this problem.

The Working Group held various community forums in which members of the public could voice their specific concerns and invited...
guest speakers could offer potential solutions or explain how similar problems have been addressed in other jurisdictions. The Working Group also created various focus groups with relevant parties, such as stakeholders and offenders, while also analyzing existing data on street crime and mental illness in Vancouver's notorious downtown eastside. Upon the convergence of information gathered across these various realms, the group was able to create a snapshot of crime as it existed within the community, why such crime may exist and how this crime ultimately affected the general public.

The idea for the establishment of a community court was put forth in the group's official report entitled Beyond the Revolving Door: A New response to Chronic Offenders (BC Justice Review Task Force, 2005). The design of the court was largely influenced by the Red Hook Community Court in Brooklyn, New York, with members of the Working Group encouraged by the apparent reduction in serious crimes within a community once riddled with violence and drug abuse. The guiding principles of this new court docket, as outlined by the BC Government on the Criminal Justice Reform website (http://www.criminaljustice-reform.gov.bc.ca) are (a) Timeliness, (b) Integration, and (c) Connection to Community. In terms of timeliness, the court is focused on hastening the entire legal process and lessening the amount of time needed in court for both the victim and the offender. Integration refers to the collaboration between social service providers and the justice system. Finally, in terms of connection to community, the court seeks to improve the community in which the criminal behavior occurred. With a goal to oversee 1500 cases annually, data reported by the government shows approximately 1786 cases being heard from September 2008 to July 2009, with official resolutions in terms of completion reported for 1076 of those cases.

Although these specialized court systems have long since crossed the border into Canada, there is a lack of published research examining their actual effectiveness. In fact, most if not all of the peer-reviewed literature on problem-solving courts has been based on US models. What research does exist on Canadian models remains largely unpublished, and tends to reflect unscientific methodology and superficial analyses, a trend that can be traced back to many of the US evaluation practices. Unfortunately, this precedent of informal, non-scientific evaluations indicates that the Downtown Community Court in Vancouver may face a similar fate in terms of proper evaluations.

4. Operational features of existing models

The inner-workings of the existing mental health and drug treatment courts in Canada are quite varied. In fact, as has been stated by those attempting to extradite a formal definition, problem-solving courts of every kind seem to lack a definitive blueprint guiding their operation (e.g., Wolff & Pogorzelski, 2005). This variability has often been attributed to the uniqueness of localized resources, differential access to funding, and the particular initiatives guiding conception (Erickson, Campbell, & Lamberti, 2006). The operational definition most widely used in existing mental health court literature was developed by Steadman, Davidson, and Brown (2001) and can be easily applied to the entire spectrum of problem-solving courts. Generally speaking, all problem-solving courts employ a single court docket composed of a collaborative team who provide assurance of availability and connections to community resources and treatment, and who also monitor and impose sanctions based on offender compliance. A common thread among all existing models is the expertise of what is often termed a "triaze team," composed of professionals from a variety of domains, from housing representatives to case workers to crown counsel. While a defining feature of mental health courts and community courts is their lack of uniform procedure and protocol, drug courts tend to have a more homogenous construction across jurisdictions (Schneider et al., 2007).

This variability across models can be seen with a wide array of procedural guidelines. Thus an efficient way to examine how the Canadian court models operate is to highlight areas in which they differ. To begin, each and every problem-solving court is based upon specific concerns plaguing the local government. For instance, Vancouver has the highest rate of property crime in the country, thus its newly developed community court will undoubtedly be focused on the specific reduction of such offences. Although some objectives are universally shared by all problem-solving models, such as public safety, cost reduction, and quality-of-life enhancement for the offender, many communities have unique goals and initiatives on which their court was based. For the Toronto mental health court, a hastening of the time taken to conduct fitness evaluations on offenders served as a motivating factor in the courts inception (Schneider et al., 2007). One of the goals of the Saint Johns mental health court was to minimize the use of restrictive interventions that force offenders into restrictive environments (Provincial Court of New Brunswick, 2004). While these goals meet the needs of the specific community, often other jurisdictions will base their developing models on more established systems without concern or consideration for the differences that may underlie community needs.

A major difference seen across problem-solving court models is the eligibility criteria in terms of offence committed. While participation in all models is voluntary on the part of the offender, some will only oversee offenders who have committed minor summary (misdemeanor) offences while others will accept both summary and indictable (felony) offences. A nationwide survey of mental health courts across the US in 2006 found that 98% accepted misdemeanor offences, 27% accepted felony charges, and 4% accepted violent felony charges (Erickson et al., 2006). In terms of Canadian models, the mental health courts in both Toronto and Saint John's accept the full scale of criminal offences, often with the belief that lower level criminal infractions should be dealt with outside of the courtroom altogether (Erikson et al., 2006). Conversely, the youth mental health courts will oversee most offences under the Youth Criminal Justice Act, with exception for offences of a more serious nature, such as murder. The existing DTC's in Canada only accept those who have committed non-violent, drug-related offences (Werb et al., 2007). Many community court models in the US, such as the Red Hook Community Justice Center in New York, oversee less serious misdemeanor offences (Flynn, 2005). The Downtown Community Court in Vancouver oversees most of the offences that are committed in the area. This includes offences falling under the Controlled Drug and Substance Act, with exception for indictable offences and hybrid offences in which the Crown proceeds by way of indictment. Thus, similar to the US community court models, the Downtown Community Court primarily deals with lower level criminal infractions.

Points of interventions also vary across models, with some systems intervening pre-plea and others following an admission of guilt. Most US mental health court models, as well as some Canadian models (e.g., Saint John's, NB) require a full acceptance of responsibility under the law before admittance to the specialized court docket is allowed. However, the Toronto Mental Health Court and a handful of models in the US actually intervene before any sort of adjudication commences (Schneider et al., 2007). In a paper examining the conceptual framework of drug courts in the US, Longshore et al. (2001) suggested that post-plea models create a larger incentive for offenders to participate as the guilty plea is held over their heads until program completion. In light of this wisdom, all Canadian DTC's require a guilty plea before offenders are able to enter into the program (Werb et al., 2007). Community courts, including the Downtown Community Court also require an admission of guilt before official acceptance into the court program.

While the monitoring of offender compliance is a practice employed by all models, failure to follow such orders often leads to various court specific sanctions decided upon by the judge. These non-compliance sanctions vary across court models, with some issuing jail time and others revamping the existing treatment mandate in hopes of encouraging continued participation. Referring again to the
nationwide survey on mental health courts in the US conducted by Erikson et al. (2006), approximately 24% reported using incarceration, 22% reported using modified treatment orders, and 14% terminated the offender's participation in the mental health court stream. Most Canadian mental health court models avoid the use of jail, placing greater emphasis on treatment order revisions or heightened court appearances. Canadian DTCs simply send offenders back to the regular justice system when they are discovered to violate the terms of their no-drug-use treatment orders. Often this no-tolerance policy leads many offenders back within the traditional court stream (Werb et al., 2007). Across the US, community court sanctions vary and are generally at the discretion of the judge. The same is true for the Downtown Community Court, in which the presiding judge can either discontinue participation in the community court program or revise sentences based upon the gravity and frequency with which the offender has failed to comply.

Process outcome is another important difference between models across all varieties of problem-solving courts. Some involve a complete dismissal of charges upon successful completion of the program. The Downtown Community Court in Vancouver either stays the charges or expunges the record of the defendant upon successful graduation from the program. Similarly, Canadian mental health courts and drug treatment courts usually aim to drop charges upon successful completion. Generally speaking, courts employing such practices recognize the detrimental effect further criminal convictions could have on existing records by placing the offenders at an even greater disadvantage when it comes to housing and employment (Seltzer, 2005). Other courts do not employ such methods, and successful completion of the program simply saves the offender from serving what would have otherwise been jail time. No consideration is made for the impending criminal record.

In sum, the reported variability across problem-solving courts in both Canada and the US may lead some to question which processes and procedures are more effective than others. The problem with answering such a question lies in the absence of formal evaluations. As stated by many, evaluations of these court models have lagged behind their rapid conception (e.g., McNiel & Binder, 2007; Schneider et al., 2007). Many state the benefits of such court systems without actually testing the truth of these statements. As it seems, what they hope to be true of this system is quickly taken for fact and is subsequently used to justify their existence. In order to speak to effectiveness and provide adequate guidance to future models, such evaluations are in need of attention.

5. Existing evaluations

In lieu of the limited availability of Canadian problem-solving court evaluations, the present overview will incorporate both Canadian and US evaluations. What little we do know regarding problem-solving courts is almost entirely based on US models, thus to discuss effectiveness without their mention would lead to a rather limited discussion. It must be noted that not one peer-reviewed Canadian evaluation could be found while conducting our review of the literature. Thus, when discussing Canadian evaluations, we refer to unpublished documents typically found on the court's website. Also, the amount of published, peer-reviewed documents examining the functioning of mental health and drug treatment court models far exceeds that of research assessing community court models. In fact, shockingly sparse is the field of literature on community court models. Thus the following examination of current evaluations will predominantly discuss findings from mental health and drug treatment courts. Based on underlying similarities, what will be assumed is that a similar research model for evaluations could be used for all three types of court systems.

Most existing evaluations, both Canadian and American, involve site-specific evaluation procedures. While this may be useful in terms of tracking the progress of individual models, it provides little insight into the overall effectiveness of the system as a whole (Schneider et al., 2007). Without knowing if a general system in which these courts are embedded is effective, we are left without a context in which to examine these site-specific evaluations. Therefore, in light of their specificity, the generalizability of existing evaluations is severely limited. This fact alone is reason for concern due to the reliance by the government on this information for the development of future models and for the allocation of funding and resources.

Many of these site-specific evaluations have no doubt arisen due to the difficulty faced when attempting to directly compare models that so widely differ. The variability inherent in this system poses a substantial barrier to the type of multi-jurisdictional evaluations that are needed to analyze the general outlook of this type of court system (Erikson et al., 2006; Schneider et al., 2007; Wolff & Pogorzelski, 2005). As summarized by Schneider et al. (2007), the few multi-jurisdictional evaluations that do exist often find what most already know to be true, that there is no uniform model for this type of court system.

The focus of existing evaluations is also a problem when attempting to understand their efficacy. Many do a wonderful job outlining the process without subsequent care for the actual outcomes. While Steadman (2005) highlights the importance of process descriptions in pinpointing how and why particular models are successful, this information is of little value without a strong association to specific outcomes.

One of the issues addressed within existing process evaluations is the actual voluntariness of these specialized court systems. All models, no matter the jurisdiction, posit a non-coercive, voluntary system with which the defendant can choose to participate (e.g. Redlich, 2005; Redlich et al., 2010). Participation in this court system is ultimately deemed voluntary because the defendant has the right to opt out of the program and continue in the traditional stream at any point in time (Poythress et al., 2002). Skepticism about the truth of this claim has led some researchers to examine this supposedly voluntary process of admittance and the level of competence of those offenders selecting this stream. In an evaluation of the Broward County Mental Health Court, Poythress et al. (2002) found low ratings of coercion by participants, indicating heightened feelings of autonomy and freedom of choice. Yet upon closer examination of responses dealing with whether someone had explained to them that it was their own choice to proceed in the mental health court stream, it was found that 32 or the 93 participants had not been aware of this choice. While discussing the limited research available on this issue, Redlich et al. (2010) noted that court participants often report not being told of their choice or being told of this choice after they have already agreed to participate.

In terms of competence to make an informed decision, the target population of these problem-solving court systems are often lacking in legal knowledge, disadvantaged within their respective communities and potentially suffering from addiction or mental health issues (Redlich et al., 2010). The potentially lowered capacity is especially alarming in light of the necessity for most to plead guilty before entering the problem-solving court system. Also, it is possible that affiliation to the criminal justice system is lengthened by way of problem-solving court participation, with frequent check-in hearings and treatment orders often lasting longer that what otherwise would have been sanctioned within the traditional system (Slate, 2003). This potentially lengthy time commitment is another consequence of participation in the system that may not necessarily be known by offenders. Redlich et al. (2010) noted that in all cases, clients of the mental health court stream (and presumably other forms of problem-solving courts as well) are “presumed to be competent and thus allowed to plead guilty.” Speaking directly on the coerciveness of mental health courts, Slate (2003) asked how it can be reasoned that a mentally ill person can be entirely competent to make the voluntary
decision to enter the system. In light of these results, perhaps the assumption of competence and subsequent statements as to the voluntariness of the system needs to be further evaluated in order to better understand current processes.

Another issue that has been addressed within some process evaluations are the actual linkages participants received to treatment and services within the community. With connections to these services being at the forefront of these court models, clearly this is an important avenue for evaluators. Boothroyd et al. (2003) compared mental health court participants to non-mental health court participants, finding the difference between these two groups in terms of access to treatment and services was not statistically significant. However, Boothroyd et al. (2003) did find differences in terms of the quantity of services attained. The quality of such services has also be an issue, with some research on mental health courts indicating no differences in the clinical outcomes of those participating in the system versus those from a matched comparison group (Boothroyd, Mercado, Poythress, Christy, & Petrla, 2005). Unfortunately, because most evaluations fail to utilize a comparison group, most existing evaluations addressing access and quality of services utilized by offenders lack insight into what may have been available through the traditional system.

Overall, existing process evaluations are more akin to descriptions of practices rather than actual evaluations of effectiveness. Many simply provide a site-specific account of processes employed by a particular model. With the variability in processes employed by different models, it is important for this field to determine which particular elements are most strongly associated with relevant outcomes.

When outcomes are addressed within evaluations, the reporting is generally limited to a specific model and fails to generalize to the wider spectrum of court systems. Typically outcomes are also associated to the overall system, without particular attention to the specific components of the court that may be more strongly related to the outcome of interest. There is also immense variability in the outcomes of interest across evaluations. While most posit recidivism as the outcome of interest, other site-specific or general model goals often fail to be evaluated. Thus the ability to determine overall efficacy in meeting a wider variety of initiatives is limited.

Overall, outcome evaluations that focus on recidivism have tended to find either a reduction in re-arrest rates among participants or a longer stretch of time before a new charge (McNiel & Binder, 2007). In an examination of a mental health court in the US, Moore and Hiday (2006) found that the re-arrest rates of those who passed through the mental health court system was one-fourth the rate of normally processed offenders. While hopeful, closer scrutiny of their methodology reveals the use of a non-equivalent matched comparison group. This means that conclusions were drawn by directly comparing the recidivism of two groups of offenders who may have demonstrated significant differences before participation in the mental health court. If differences exist prior to participation, once cannot be sure that differences in outcome variables are attributable to program participation. This type of methodology is often employed within this type of evaluations, they pose a serious threat to internal validity, subsequently weakening the ability to draw strong causal conclusions.

6. Methodological problems in current evaluations

Often the methodological limitations seen within existing evaluations can in part be attributed to the failure to adequately plan for extensive assessments in advance. Planning for evaluations would lead to the careful consideration of important factors, such as the funds that will be required, the data that will be needed and ultimately the variables that are of interest. Steadman (2005) produced a detailed guide to be used by mental health courts as a way of motivating the undertaking of empirical evaluations. Important to this guide is the actual planning process that must precede evaluations. Lipsey and Corday (2000) also emphasize the importance of planning, specifically noting the need to solidify in advance what outcomes are important, how they should be measured, and their significance when speaking to the overall effectiveness of the court model. While most of the Canadian problem-solving courts acknowledge the need for evaluations and their plan to conduct these evaluations, none elude to the need for a thoughtful plan behind such evaluations. This failure to plan provides a substantial barrier to the ability for these courts to undertake effective research that will truly demonstrate efficacy.

Another issue with existing evaluations is the formality with which progress is appraised. As previously mentioned, most Canadian evaluations involve an informal reporting of relatively basic statistics. Readily available is information pertaining to the number of referrals and successful completions, however, less available are formal statistical analyses of important variables such as recidivism, clinical outcomes, and community service connections. An exception to this can be seen in two comprehensive evaluations conducted on both the Toronto and Vancouver Drug Treatment Courts. Both of these evaluations employed quasi-experimental designs in the form of matched comparison groups. The evaluation of the Vancouver Drug Treatment Court relied upon a comparison group of incarcerated, drug addicted offenders matched on a variety of variables. However, despite as noted by Werb et al. (2007), the groups actually differed on important factors, such as criminal history. Further affecting the legitimacy of the comparison groups, those in the comparison group spent double the average number of days in remand then those participating in the DTC. While these differences between groups would cause skepticism if positive results were obtained for DTC participation, however, no significant differences were found in the post participation criminal charge rate between the two groups. Unfortunately, as by Werb and associates, this evaluation also failed to monitor post program drug use. Thus in addition to a lack of significant findings in terms of recidivism, nothing was truly learned about the court’s ability to alter addiction.

While most of the Canadian models note the need for improved or continued evaluations, few have proactively sought to rectify their data collection procedure or instill their methods with scientifically sound analyses. An example of the level of improvements being mentioned within existing evaluations can be seen in the 2006 report on the Saint John Mental Health Court (Mental Health Court Canada, 2003), in which the goal for future evaluations involves interviews with a sample of those participating in the program. While this will certainly shed light on how this program is experienced by participants, it will not provide the empirical data needed to objectively measure the program’s success. As noted by Schneider et al. (2007), anecdotal information pertaining to how the program is experienced by participants is not sufficient, especially when such evaluations are being used to encourage the development of subsequent models.

In general, published evaluations of US models have come far closer in actually establishing the effectiveness of problem-solving courts. The greater formality of their methodology can be seen in the data collection procedures as well as in the subsequent statistical analyses. Rather than simple descriptive variables, some existing evaluations employ a quasi-experimental design using matched comparison groups. Examples of this quasi-experimental methodology can be seen in evaluations of various mental health courts, such as the Alaska Mental Health Court (The Alaska Mental Health Trust Authority, 2008), San Francisco Mental Health Court (McNiel & Binder, 2007) and Broward County Mental Health Court (Christy, Poythress, Boothroyd, Petrla, & Mehra, 2005), as well as various drug treatment courts, such as the Douglas County Drug Treatment Court (Sporhn, Piper, Martin, & Frenzel, 2001), Baltimore Drug Treatment Court (Breckenridge, Winfree, Maupin, & Clason, 2000), and the Escambia and Okaloosa Drug Treatment Court in Florida (Peters & Murrin, 2000). To date, no such analyses have been attempted with community court models. Many of the existing assessments for these courts closely resemble the informal evaluations of the Canadian models outlined above.
The matched comparison groups used by these studies often comprise offenders from an associated community without access to problem-solving court services or who decline to participate in the specialized court docket. Others provide a historical comparison between recidivism rates for a matched group of offenders’ pre-court development. However, while the use of a quasi-experimental design does increase the validity of findings and is a significant improvement from the use of non-equivalent matched comparison groups, there are still many shortcomings to their methodology that hinder ability to achieve true internal validity (Staines, McKendrick, Perlis, Sacks, & DeLeon, 1999). One of these issues pertains to the selection bias inherent in non-randomized evaluations. The presence of selection bias has often called into question the practice of using matched comparison groups. There is an inherent and observable difference in those who voluntarily participate in problem-solving courts (Wilson, Mitchell, & Mackenzie, 2006), such as motivation to change. Thus even though attempts are made to match participants on a variety of other factors, differences between groups may still exist prior to commencement of the actual program. A solution to this problem lies with the application of a more scientifically sound, experimental procedure: random assignment.

As stated by Dynarski (1997), random assignment has often been credited as the best available method for achieving reliable estimates of program effectiveness. Ultimately it is able to generate a group comparable on every dimension other than exposure to the treatment in question. It removes the threats to internal validity generated by other designs, and has thus become a standard pursued in most existing, and publishable experimental research designs (Metcalf, 1997). Yet, despite its usefulness in designing a controlled analysis of outcomes, many studies opt out of such selection procedures. In meta-analysis of 50 drug treatment court evaluations based on models across the US, Wilson et al. (2006) found that only five attempted random assignment. When randomized samples were in fact used, the rates of recidivism were considerably lower (14%). These differential outcomes found through the application of random assignment are of considerable concern given the prevalence of non-randomized designs within the existing literature. If non-randomized evaluations are leading to biased evaluations, their use should be re-examined.

In one of the only studies to employ random assignment in the evaluation of a mental health court, Cosden et al. (2003, 2005) provided a comprehensive analysis of recidivism, substance abuse and overall life satisfaction among a group of court participants from a township in the US. Those who agreed to participate in the study were randomly assigned to either the mental health court (MHC) or treatment as usual (TAU) group. Overall, results showed that those assigned to the MHC group were significantly less likely to be abusing substances and to have committed a new offence at the 24 months follow-up compared to those in the TAU group. However, other outcome variables, such as life satisfaction and psychosocial functioning tended not to differ between groups. By showing the differences that are in fact achieved through participation in this mental health court we are provided with a far more realistic basis on which to draw conclusions on overall efficacy.

While random assignment is absent in all Canadian and most American mental health and community court evaluations, it has actually been used in a variety of recent drug treatment court evaluations. This could in part be explained by the near standardized procedures guiding these problem-solving court models in comparison to the wider variability seen within other models (McGaha, Boothroyd, Poythress, Petrilia, & Ort, 2002). Overall, with their major improvements to internal validity (Corrigan & Salzer, 2003), these evaluations serve as a more solid basis on which to build future models or speak to general efficacy.

A commonly recited excuse for the failure to employ random assignment is the ethical implications of denying services to the designated control group (McGaha et al., 2002; McNiel & Binder, 2007; Moore & Hiday, 2006; Steadman, 2005). McNiel and Binder (2007) assume it would be unfair to withhold services to a group of offenders and instead attempt to minimize the effects of using a non-randomized comparisons group by administering a propensity weighting system. This weighting is the probability that a particular individual would be selected for treatment given a set of observable characteristics. It was hoped that this weighting would reduce the confound between pre-treatment factors and treatment effects, thus limiting the selection bias inherent in non-randomized studies. However, this weighting cannot completely remove this bias and results will still be weakened in both internal and external validity (McNiel & Binder, 2007; Staines et al., 1999).

Werb and associates, while discussing the results of the Toronto and Vancouver DTC models, note the evaluators dislike of randomized evaluations due to their denial of treatment to a randomly selected group of offenders. Yet based on the results of studies mentioned above, this assumption of increased access to treatment and community services may not be grounded in the reality of these court systems.

Some have commented on the paternalistic attitudes that surround this type of court system. Claiming to know what program is best for a group of offenders and subsequently labeling the denial of such program unethical would be more understandable if the true effectiveness of such program was known. While it would be unethical to withhold access to programs known to be effective, nothing is yet known about the true effectiveness of problem-solving court models. In fact, some could posit it unethical to offer a program to offenders without adequate testing of its efficacy.

Overall, the current practices in place with regard to program evaluations for problem-solving court models are lacking in the ability to deliver conclusive results. Unfortunately, with the rapid expansion of such models despite the absence of sound research, adequate evaluations are in danger of continuing to be overlooked. It is important that evaluations address both process and outcome, with explicit links between the two carefully displayed through the use of sound research methodology. With the need for better evaluation models and the knowledge of random assignment’s strength in providing compelling results, it seems quite natural to advocate for its use within future evaluations.

References


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