

**Examining the Application of the Principles of Therapeutic Jurisprudence
in a Mental Health Court**

by

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Author's Declaration

I hereby declare that I am the sole author of this thesis. This is a true copy of the thesis, including any required final revisions, as accepted by my examiners.

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Abstract

Therapeutic jurisprudence is commonly cited as the theoretical foundation for a range of specialized problem solving courts, including Mental Health Courts (MHCs). However, studies to date have failed to explicitly examine how MHCs apply the principles of therapeutic jurisprudence. Moreover, an extensive review of the literature failed to locate a single-sourced consolidation of these principles (a “model”), which in turn, has imposed a barrier to the rigorous examination of how MHCs have applied the theory. To address both circumstances, the present study first conducted an extensive review of the literature to extract three overarching principles of therapeutic jurisprudence, including: 1) Therapeutic jurisprudence promotes supports and services in line with rehabilitation and reintegration; 2) Therapeutic jurisprudence promotes therapeutic rules and procedures over those considered anti-therapeutic; and 3) Therapeutic jurisprudence promotes therapeutic interactions over those considered anti-therapeutic. The researcher then reviewed the literature to extract indicators of how each principle is applied in a MHC setting. These principles and associated indicators were consolidated into a “MHC Model”. This Model serves as an original contribution to the literature, and is suitable for use as a rubric in examining how the principles of therapeutic jurisprudence have been applied.

Guided by the MHC Model, the researcher then sought to determine how a specific MHC applies the identified principles of therapeutic jurisprudence. Data were collected through the researcher’s observation of the court and through interviews with ten subjects whose involvement covers the spectrum of services and functions provided by this MHC. Observations of the researcher and data obtained from respondents were compared to the MHC Model to establish the degree of consistency.

The findings suggest that the court applied the first and second principles of therapeutic jurisprudence in a manner that is weakly consistent with the literature. The court’s application of the third principle is essentially congruent with the literature, and is therefore considered highly consistent. These findings shed light on the reality that MHCs may face constraints beyond their control that prevent rigorous application of therapeutic jurisprudence principles in line with the ideal reflected in the literature. In light of these findings, the study has been able to develop recommendations for stronger alignment with the principles, which the court might consider adopting in order to improve its functioning and, potentially, outcomes. Further, this study highlights the need for future research to consider how MHCs might best apply the principles of therapeutic jurisprudence in less than ideal circumstances.

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Dedication

This thesis is dedicated to my parents: Robert Simpson and Donna Lychwa. Thank you for all of your love, guidance, and support. You have taught me to work hard for the things I want and to never give up. Thank you for all you have done to assist me through this journey, and for listening to me talk about the same topic for two and a half years.

Table of Contents

Acknowledgments.....	iv
Dedication.....	v
Table of Contents.....	vi
List of Figures.....	viii
List of Tables.....	ix
CHAPTER ONE: INTRODUCTION.....	1
Statement of Purpose.....	3
Significance.....	4
Study Outline.....	5
CHAPTER TWO: LITERATURE REVIEW.....	6
Part I: Application of Therapeutic Jurisprudence.....	6
Defining Therapeutic Jurisprudence.....	6
Application of Therapeutic Jurisprudence in MHCs.....	7
Indicators of Therapeutic Jurisprudence.....	9
Part II: Establishing the Principles of Therapeutic Jurisprudence.....	10
Part III: MHC Model.....	12
Part IV: Indicators of Therapeutic Jurisprudence Principles.....	13
Principle 1: Outcomes Geared to Rehabilitation and Reintegration.....	14
Principle 2: Promotes Therapeutic Rules and Regulations.....	20
Principle 3: Therapeutic Interactions.....	26
CHAPTER THREE: METHODS.....	31
Case Study Methodology.....	31
Strengths.....	32
Limitations.....	32
Use of Case Studies.....	33
Setting.....	34
Sampling and Recruitment Procedures.....	36
Sample.....	37
Data Collection.....	38
Participant Observation.....	38
Semi-Structured Interviews.....	40
Data Analysis.....	42
Reflexivity of the Researcher.....	46

Ethical Considerations	48
CHAPTER FOUR: FINDINGS	51
Principle 1: Outcomes Geared to Rehabilitation and Reintegration	51
Principle 2: Therapeutic Rules and Procedures	63
Principle 3: Therapeutic Interactions	82
CHAPTER FIVE: DISCUSSION AND CONCLUSION	93
Discussion	93
Principle 1: Does Not Reflect the MHC Model	97
Principle 2: Indeterminate	100
Principle 3: Reflective	102
Conclusion	105
Implications of MHC Model	106
Implications Specific to this MHC	106
Future Research	107
Concluding Statements	111
Bibliography	112
Appendix A	122
Appendix B	124
Appendix C	125
Appendix D	127
Appendix E	128

List of Figures

Figure 1: Courtroom Physical Layout.....	36
Figure 2: Pattern Coding Example 1	45
Figure 3: Pattern Coding Example 2	46

List of Tables

Table 1: Mental Health Court Model	13
Table 2: Sample Characteristics.....	38
Table 3: Mental Health Court Model	94
Table 4: Findings Compared to the MHC Model.....	96

CHAPTER ONE: INTRODUCTION

Individuals diagnosed as mentally ill comprise 20-30% of the incarcerated population in Canada (Schneider, Bloom, & Heerema, 2007). For persons with mental illness (PMI), interactions with the criminal justice system are typically the consequence of minor offences, and often reflect the lack of adequate mental health and community services (Schizophrenia Society of Canada, 2005). If convicted, PMI are commonly placed into prison environments that lack the necessary treatment, support, or assistance they require to address their mental health needs (Schizophrenia Society of Canada, 2005). Recognizing the inappropriateness of this response, ongoing debate considers how the criminal justice system could better respond to PMI who are in conflict with the law.

Over the past two decades, the theory of therapeutic jurisprudence has had a notable impact on the legal system and its treatment of what are termed “vulnerable populations”. Initially developed in the 1980s, therapeutic jurisprudence entails the “study of the role of the law as a therapeutic agent” (Wexler & Winick, 1996, p. xvii). The theory posits that various aspects of the law can result in positive (“therapeutic”), negative (“anti-therapeutic”), or neutral consequences (Steadman et al., 2001; Wexler & Winick, 1992). Recognizing these outcomes, therapeutic jurisprudence encourages courts to evaluate whether anti-therapeutic aspects can be replaced by more therapeutically aligned alternatives (Wexler & Winick, 1996).

The perspective offered by therapeutic jurisprudence has become integrated into a variety of specialized courts in response to a range of social and health-related issues (Schneider, Bloom & Hereema, 2007). In general, courts of this nature are community-based programs that divert people facing criminal charges and substitute highly

structured and monitored therapeutic regimens (Pollock, 2009). In so doing, they afford accused persons the opportunity to access treatment and social support services in place of traditional criminal justice processes and dispositions (Pollock, 2009). Among these specialized courts, and the focus of this proposed study, are Mental Health Courts (MHCs).

While there is little doubt that MHCs are inspired by the theory of therapeutic jurisprudence, the literature has thus far failed to explicitly examine how these courts apply the theory. Moreover, an extensive review of the literature failed to locate a single-sourced enumeration of the principles of therapeutic jurisprudence, which in turn, has impeded rigorous examination of how therapeutic jurisprudence is applied in MHCs. Rather, as the literature review will demonstrate, studies of MHCs typically confirm the application of therapeutic jurisprudence through the presence of “indicators” rather than a more fulsome compliance with principles on which the theory is founded. Indicators, in this context, refer to reflective elements of therapeutic jurisprudence that are found in MHCs. While valid, they are best considered as necessary, but not sufficient to establish congruence with the theory. Sufficiency would be attained by contrasting a given MHC with a consolidation of the literature that, in the ideal, identifies overarching principles of therapeutic jurisprudence and key indicators/elements of each. Used as a rubric, such a resource would differentiate between courts that have “some of the characteristics” and those having a “considerable or sufficient number of characteristics”.

Without such a rubric, how MHCs apply the theory of therapeutic jurisprudence is not, and cannot be adequately answered. This circumstance is particularly problematic for studies measuring the impact of MHCs on rates of recidivism, where generalizability

requires the assumption that therapeutic jurisprudence is applied fully and consistently across MHCs.

Statement of Purpose

This study addresses these deficits in both the theoretical knowledge and the MHC literature, and is guided by two major research questions.

(1) What are the core principles of therapeutic jurisprudence and the indicators of each?

To answer this question, the researcher conducted an extensive review of the literature to extract and consolidate a) a list of the overarching principles of therapeutic jurisprudence and b) indicators of how each is applied in a MHC setting. This information was consolidated into the “MHC Model”, which is suitable for use as a rubric in examining how a given MHC has applied the principles of therapeutic jurisprudence.

The second research question asks: ***(2) Does the application of therapeutic jurisprudence principles in the MHC under study reflect the MHC Model?***

Sub-questions examine each of three overarching principles of therapeutic jurisprudence:

2a) How does Mental Health Court promote therapeutic solutions?

2b) How does Mental Health Court apply therapeutic rules and procedures?

2c) How does Mental Health Court facilitate therapeutic interactions?

To answer these questions, the researcher conducted interviews with ten participants whose involvement in the MHC under study spans the range of functions and services germane to the court. Questions sought to determine how the court applies the principles of therapeutic jurisprudence. These interviews were supplemented by twenty-five hours of participant observation of the court in operation. The researcher then compared and

contrasted the codes generated from these interviews with the MHC Model to determine the degree consistency. Indicators were judged to be highly consistent when there was strong overlap between the data and the MHC Model; conversely, they were judged to be weakly consistent when there was little or no overlap between the data and the MHC Model.

Significance

This study has the potential to contribute to two underdeveloped areas of the literature on both MHCs and therapeutic jurisprudence. First and foremost, it develops a MHC Model as an original contribution to the literature, providing the first single-sourced description of the principles of therapeutic jurisprudence and associated indicators of how these principles can be applied in a MHC setting. Further, the MHC Model is able to serve as a rubric by which other MHCs can be examined using similar methodology, and opens the door to comparative studies of how therapeutic jurisprudence is applied across MHCs.

Second, this study is the first to explicitly assess how a MHC applies the principles of therapeutic jurisprudence. In particular, it uses the MHC Model to examine how the court under study applies these principles, and identifies specific areas of stronger and weaker alignment. In so doing, the study has been able to develop recommendations for stronger alignment with the principles, which the court might consider adopting in order to improve its functioning and, potentially, outcomes.

Further, studies on MHCs generally take the form of systemic or outcome evaluations, typically measuring rates of recidivism compared to traditional criminal courts. Between-study comparisons are difficult, if not impossible, as there has been no

way to compare courts in terms of similarities and differences. Should future outcome studies incorporate the MHC Model and methodology introduced in the present study, there is the potential for comparability and generalizability to be enhanced. Comparative benchmarking of this nature would permit MHCs to identify areas of relative weakness and to plan for greater alignment with the principles upon which the theory of therapeutic jurisprudence is founded.

Study Outline

Chapter 2 of this study reviews the literature pertaining to both therapeutic jurisprudence and MHCs. At its conclusion, the review introduces a MHC Model that summarizes and consolidates three overarching principles, along with key indicators for each. Chapter 3 describes the methods and methodology for the study, and Chapter 4 presents the findings. Chapter 5 includes a discussion of these findings, followed by the conclusions derived from the study and recommendations for future research.

CHAPTER TWO: LITERATURE REVIEW

This literature review is divided into four sections. Part I examines the application of therapeutic jurisprudence and summarizes shortcomings identified in past research. In particular, studies tend to utilize therapeutic jurisprudence as a “source of guidance”, in that there is no standardized rubric applied to assessing the degree of fit with established principles. This limitation ultimately impedes the examination of how MHCs apply therapeutic jurisprudence in its entirety.

In response to these gaps in knowledge, the remainder of this chapter focuses on the development of the consolidated MHC Model. In particular, Part II reviews the literature to establish overarching principles of therapeutic jurisprudence. Upon so doing, Part III presents a consolidated MHC Model, including the overriding principles and associated indicators as to how each is applied. Part IV elaborates this Model, detailing the identified indicators. Of note, the development of this Model was a necessary step in answering the second research question. In particular, interview questions sought to determine how the court applies the principles established by the MHC Model. In addition, the Model is later compared to the findings in order to identify areas of strong and weak consistency.

Part I: Application of Therapeutic Jurisprudence

Defining Therapeutic Jurisprudence

The theoretical perspective of therapeutic jurisprudence, developed in the 1980s, is the “study of the role of the law as a therapeutic agent”, and is an “interdisciplinary enterprise designed to produce scholarship that is particularly useful for law reform” (Wexler & Winick, 1996, pp. xvii). Therapeutic jurisprudence recognizes that the law is

not merely a series of standardized rules and regulations, but rather a social force that can also influence psychological and emotional well being (Wexler and Winick, 1996). In this regard, various aspects of the law can produce positive (deemed “therapeutic”), negative (“anti-therapeutic”), or neutral consequences (Steadman, Davidson, & Brown, 2005; Wexler & Winick, 1991).¹

Therapeutic jurisprudence is commonly cited as the theoretical foundation for a range of specialized applications known as problem solving courts, including: drug treatment court, domestic violence court, reentry court (dealing with the reintegration of individuals on parole, such as sex offenders), dependency court (a branch of family court that addresses abuse and neglect), youth court, and MHC (see Hora & Stalcup, 2008; Winick, 2002, p. 1057-1058). Wexler (1995) states that the definition of “therapeutic” has traditionally been left vague to accommodate these differences. Insight as to what constitutes therapeutic practice is obtained from several research disciplines, including psychiatry, psychology, sociology, criminology, and social work (Wexler, 1999). In relation to each court, relevant research, to some extent, shapes how the central constructs of “therapeutic” and “anti-therapeutic” are defined (Wexler, 1999). The defining criterion is that any consequence that is *arguably therapeutic* would fall “within the broad contours of therapeutic jurisprudence” (Nolan, 2009, p. 186; Wexler, 1995).

Application of Therapeutic Jurisprudence in MHCs

MHCs are commonly cited as a direct application of problem-solving courts and therapeutic jurisprudence. However, a review of the literature yields only a modest number of studies that explore how therapeutic jurisprudence has been applied in MHCs.

¹ With respect to this study, “therapeutic” refers to anything that is beneficial to the individual’s mental health, or encourages rehabilitation and reintegration. Conversely, “anti-therapeutic” refers to anything that is harmful to the individual’s health or impedes their rehabilitation and reintegration.

Rather, the majority of the literature involves systemic or outcome evaluations, typically measuring rates of recidivism compared to traditional criminal courts (see for example Boothroyd et al., 2005; Christy et al., 2005; Hiday & Ray, 2010; McNeil & Binder, 2007; Moore & Hiday, 2006; Steadman & Naples, 2005).

Typically, such outcome studies acknowledge a general alignment with therapeutic jurisprudence by referencing the theory as having influenced the MHCs under study. For example, Herinckx et al., (2005) suggest MHCs “operate as a problem-solving court under the philosophy of therapeutic jurisprudence” (p. 854). Redlich et al., (2005) examine two generations of MHCs, suggesting both are “based on the premise of therapeutic jurisprudence” (p. 532). Further, Boothroyd et al., (2003), suggests, “therapeutic jurisprudence has been influential as a philosophic basis for the creation of some if not all mental health courts” (p. 55). None, however, provide explicit definitions of what is meant by “therapeutic jurisprudence”.

Other studies that acknowledge therapeutic jurisprudence as the basis do suggest that MHCs are guided by specific principles. For example,² Wolff (2002) suggests MHCs “[embrace] the principles of therapeutic jurisprudence” (p.431), while Winick (2002) purports that MHCs “often use principles of therapeutic jurisprudence to enhance their functioning” (p. 1064). Further, Ray & Brooks Dollar (2013) suggests MHCs are “based on the principles of therapeutic jurisprudence, which suggests that the law can have a positive psychological outcome for offenders when it is used to encourage meaningful and positive changes” (p. 649). However, such references are typically limited to a

² Further to the outlined examples, Leroux (2008) purports that MHCs “operate under the principles of therapeutic jurisprudence” (page 4). Moreover, Winick (2002) again acknowledges that “problem solving courts use principles of therapeutic jurisprudence to enhance their functioning” (p. 1064). Schneider Bloom & Hereema (2007) describe it as “a theory that is widely regarded as having roots in common sense” (p. 43).

sentence within the introductory passage, and consistently fail to elaborate or define the principles to which they allude.

In summary, research that specifically addresses the application of therapeutic jurisprudence in MHCs invariably identifies significant shortcomings, typically in relation to the adoption of broad definitions and an unsystematic application of the theory. As such, these studies have been unable to provide clear explanations as to how MHCs have applied the theory of therapeutic jurisprudence.

Indicators of Therapeutic Jurisprudence

As mentioned, another way that MHCS tend to confirm the application of therapeutic jurisprudence is by identifying the presence of “indicators”. In this context, the term “indicators” encompasses any number of attributes that could potentially be considered therapeutic. For example, Petrucci (2002), Talesh (2007) and Wales, Hiday & Ray (2010) describe the importance of the judiciary in facilitating a therapeutic experience, and identify beneficial therapeutic “elements” that judges can incorporate into interactions, including: a) clear, understandable communication; b) involving the offender in the decision-making process; and c) demonstrating understanding, leniency, and sympathy whilst affording room for improvement and second chances. Wales, Hiday & Ray (2010) further identify the importance of d) “a heightened level of interpersonal treatment of participants that affords them dignity, respect and voice; e) accountability of participants and service providers alike; and f) transparency for decisions reached through an open negotiation process” (p. 265).

These indicators, although valid, are best considered as necessary, but not sufficient to conclude that the theory of therapeutic jurisprudence has been adequately

applied. In other words, applying “some parts” of a theory is not the same as applying “enough parts” to meet the standard of sufficiency. Assessing sufficiency is better accomplished by consolidating the overarching principles of therapeutic jurisprudence and key indicators/elements for each. A resource of this nature would introduce a standard specifying the number and configuration of indicators that must be observed to confirm that therapeutic jurisprudence has been applied.

Overall, the few studies that specifically address the application of therapeutic jurisprudence in MHCs identify significant shortcomings, including the use of broad definitions and the unsystematic application of the theory. Many studies tend to utilize the construct of therapeutic jurisprudence as a “source of guidance” (Casey & Rottman, 2000, p. 446). In others, the application of therapeutic jurisprudence is confirmed through the presence of reflective indicators, which are insufficient to confirm adequate application of the theory as they fail to meet the standard of sufficiency described. As a result, studies to date have been unable to present a complete assessment of the application of therapeutic jurisprudence.

Part II: Establishing the Principles of Therapeutic Jurisprudence

Despite the traditionally broad definitions and flexible application of therapeutic jurisprudence construct, developments in the literature have overwhelmingly concentrated on the theory in relation to mental health (Wexler, 1995). In reviewing these developments, the researcher sought to identify the underlying goal of therapeutic jurisprudence, as well as specific areas of the court to which the theory can be applied.

Foremost, therapeutic jurisprudence describes how the law has the potential to heal through the improvement of health and psychological functioning, and recognizes

that underlying disorders can cause or contribute to criminal behaviour (Talesh, 2007; Wexler, 1995; 2000; Winnick, 1997). In so doing, therapeutic jurisprudence suggests the criminal process should focus on individual healing in place of categorizing, and punishing a group of offenders (Schneider, Bloom, & Heerema, 2007; Talesh, 2007). In line with these concepts, the literature consistently identifies the underlying goal of therapeutic jurisprudence as the rehabilitation and reintegration of individuals involved in the criminal justice system (Hora, Schma & Rosenthal, 1999; Schneider, Bloom, & Hereema, 2007; Talesh, 2007; Wexler, 2000; Winick, 2002).

The theoretical literature distinguishes two applied areas of the law. First, therapeutic jurisprudence can be used to examine the “structure” of the law and how rules and procedures impact the emotional and psychological wellbeing of PMI and their supporters (Boothroyd, Pythress, McGaha & Petrilla, 2003; Schneider, Bloom & Hereema, 2007; Wexler, 1995; 1999; 2000). To determine which roles and procedures are therapeutic, the theory encourages courts to consider “whether the process was sensitive to the individual characteristics of the accused; and whether the accused was treated fairly and with respect” (Schneider, Bloom & Hereema, 2007, p. 140). In so doing, therapeutic jurisprudence encourages courts to adopt therapeutic rules and procedures over those considered anti-therapeutic.

In addition to rules and regulations, therapeutic jurisprudence examines the effects that may stem from interactions with various legal actors (Boothroyd, Poythress, McGaha & Petrila, 2003; Lurigio et al., 2000; Wexler, 2008; Winick, 2002). Here, legal actors are recognized as therapeutic agents who hold the potential to affect the mental health and psychological wellbeing of the people they encounter in the legal setting

(Watson et al., 2001; Wexler, 2000; 2008; Winick, 2002). In this sense, therapeutic interactions can facilitate participants' successful participation in the courts, whereas anti-therapeutic interactions can adversely affect the participant's compliance and subsequent success (Wexler, 2008). As such, therapeutic jurisprudence advises courts to "question whether each worker recognizes how his job can affect the therapeutic outcome and the process" (Schneider, Bloom & Hereema, 2007, p. 53). In so doing, it encourages actors to adopt interactions aligned with positive outcomes over ones considered anti-therapeutic.

In summary, with respect to MHCs:

- 1) Therapeutic jurisprudence promotes supports and services in line with rehabilitation and reintegration;
- 2) Therapeutic jurisprudence promotes therapeutic rules and procedures over those considered anti-therapeutic;
- 3) Therapeutic jurisprudence promotes therapeutic interactions over those considered anti-therapeutic.

Part III: MHC Model

Table 1 summarizes the three overarching principles of therapeutic jurisprudence and associated indicators of how each is applied in a MHC setting. The proceeding discussion will elaborate this table and discuss each of the outlined indicators as extracted from the literature.

Table 1: Mental Health Court Model

PRINCIPLES	INDICATORS OF PRINCIPLES
1) Goals	a) Balancing rights with care b) Consideration of Mitigating Factors c) Collaboration with Community Resources d) Monitored Progress
2) Rules	a) Voluntary Participation b) Teamwork Approach c) Relaxed Rules/Procedures d) Assistance throughout Court Process e) Participant Inclusion f) Family/Caregiver Inclusion
3) Interactions	a) Therapeutically Enhanced Roles b) Verbal/Non-Verbal Communication

This Model represents an original contribution, as it is the first single-sourced consolidation of literature to date, and is suitable for use as a rubric in examining how a given MHC has applied the principles of therapeutic jurisprudence. Further, specific to the remainder of this study, the development of the MHC Model was a necessary step in answering the second research question. In particular, interview questions sought to determine how the court applies the principles established by the MHC Model. In addition, the Model is later compared to the findings in order to identify areas of strong and weak alignment.

Part IV: Indicators of Therapeutic Jurisprudence Principles

As discussed, the application of therapeutic jurisprudence in MHCs is typically confirmed by the presence of “indicators”, rather than by examining the full and rigorous implementation of established principles. Here, the term “indicator” broadly refers to elements of MHCs that could be considered therapeutic under a traditionally broad

conception of the theory. Additionally, the literature offers various prescriptions as to how MHCs can adopt therapeutically aligned aspects of the law. These prescriptions commonly incorporate findings from disciplines such as psychology, psychiatry, sociology, and social work. Although valid, these prescriptions and indicators are best considered necessary conditions, and are not sufficient to determine whether the theory of therapeutic jurisprudence had been satisfactorily applied. This section seeks to address these deficiencies by extracting and consolidating the various indicators and prescriptions from the literature, each of which is located under the appropriate principle of therapeutic jurisprudence.

Principle 1: Outcomes Geared to Rehabilitation and Reintegration

Indicator 1A) Balanced Response to Crime.

In order to achieve rehabilitation and reintegration outcomes, the literature acknowledges the need for MHCs to provide a “balanced” response to the crime (Redlich et al., 2005; Rottman & Casey, 2000; Schneider, Bloom & Hereema, 2007).³ In this sense, an appropriate response to crime includes considerations to denounce criminal conduct, deter other offenders from committing similar offences, and to protect the community for future harm (Rottman & Casey, 2000; Schneider, Bloom & Hereema, 2007). Upon satisfying these conditions, MHCs are met with a challenge to further incorporate a caring and effective response to the participant’s underlying disorder and associated needs (Rottman & Casey, 2000).

³ With respect to MHCs, *R. v. C.A.M.*, (1996) suggests: “The determination of a just and appropriate sentence is a delicate art which attempts to balance carefully the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offence, while at all times taking into account the needs and current conditions in the community” (As cited in Schneider, Bloom & Hereema, 2007, p. 99).

According to the literature, traditional responses to crime emphasize the need for justice, deterrence, and the protection of society (Lamb, Weinberger, & Gross, 2004; Rottman & Casey, 2000).⁴ However, they fail to consider the treatment, support, and assistance PMI require to address their mental health needs (Schizophrenia Society of Canada, 2009). As such, the MHC literature characterizes traditional responses as futile, insofar as punishment in and of itself is “ineffective as a deterrent when the behavior is rooted in psychiatric disorder” (Wolff, 2002, p. 432). Rather, such responses can perpetuate PMIs’ involvement in a revolving door process, whereby “the ‘hard-to-serve’ elements of the population continue to find themselves in conflict with the law” (Cosden et al., 2003; MacDonald et al., 2014, p. 8).

In recognition of these shortcomings, MHCs use traditional sanctions sparingly.⁵ Instead, where possible,⁶ responses seek to effectively balance these considerations. In particular, MHCs offer alternatives⁷ that incorporate restorative or remedial measures, using “sanctions and rewards to promote prosocial behaviours and positive change” (Goldberg, 2011, p. 9). Such responses satisfy this balance by responding to the crime in ways likely to be effective while addressing the offender’s underlying disorders.

⁴ The *Criminal Code of Canada* outlines codified responses to crime, with the intention to: denounce unlawful conduct; deter the offender and other persons from committing offences; separate offenders from society, where necessary (...) to provide reparations for harm done to victims or to the community; and to promote a sense of responsibility in offenders (1985, s.718).

⁵ Redlich et al. (2005) examined the characteristics of eight MHCs, and found that seven reported using traditional sanctions such as jail “rarely and conditionally”, while the eighth utilized such responses “liberally” (p. 529).

⁶ Some MHCs deal with more serious offenses that warrant mandatory sentencing, thereby eliminating the MHC’s latitude to consider such alternatives. Also, some MHC dispositions do not engage participants in treatment, such as peace bonds and absolute discharges (Schneider, Bloom & Hereema, 2007).

⁷ For example, the literature suggests MHCs routinely utilize diversion programs, which “redirect individuals from the criminal justice and correctional systems to appropriate mental health-care services and correctional supports where possible” (Goldberg, 2011; Lamb, Weinberger, & Gross, 2004; Schneider, Bloom, & Hereema, 2007, p. 69; Talesh, 2007). Progress for the diverted person is periodically reviewed, and praised or sanctioned accordingly (see Section 1d).

Indicator 1B) Consideration of Mitigating Factors.

To effectively respond to participants' needs, MHCs "generate the need for new kinds of information not typically collected by courts" (Winick, 2002, p. 1060). In particular, MHCs seek to identify mitigating factors that can potentially thwart successful rehabilitation and reintegration⁸ (Redlich et al., 2005; Schneider, Bloom & Hereema, 2007; Wolff, 2002). Examples of mitigating factors include the nature of the participant's underlying disorder, the person's level of comprehension, and the person's housing and employment status. Addressing these factors introduces the potential to enhance participant's ability to achieve success.

A core premise of MHCs is that underlying disorders are often the cause of, or a major contributor to, the participant's criminal behaviour (Talesh, 2007; Wolff, 2002). Accordingly, in effectively addressing them, MHCs seek to identify "the severity and type of mental disorder, age, and presence or absence of mental retardation" (Redlich, 2005, p. 606). The courts may further inquire about concurrent disorders such as substance abuse, which is "the most common and clinically significant comorbid disorder among adults with severe mental illness" (Drake et al., 2001, p. 469). To obtain this information, MHCs rely on psychiatric evaluations—typically conducted by court-designated psychiatrists (Redlich, 2005; Schneider, Bloom & Hereema, 2007). Understanding all dimensions of the disorder allows MHCs to consider supports and treatment responses based on need and "not correlated with the seriousness of the offence" (Schneider, Bloom & Hereema, 2007, p. 176).

⁸ Wolf (2002) suggests that judges consider these factors when setting sentences, referred to as "therapeutically informed sentencing" (p. 435).

In addition, MHCs seek to acknowledge participants' varying levels of comprehension, and tailor interactions accordingly. This accommodation reflects that mental disorders are often characterized by "deficits in attention, cognition, and other executive functions that contribute to comprehension generally and are likely to contribute to MHC comprehension specifically" (Redlich, 2005, p. 611). In particular, reduced comprehension can result in difficulty understanding, and thus adhering to, court dispositions (Redlich, 2005).⁹ Recognizing this potential impediment, MHCs endeavour to present information in a way that is tailored to each participant's level of comprehension, thereby increasing their ability to understand and fulfill court orders (Redlich, 2005).¹⁰

As mentioned above, the research indicates that PMI are frequently homeless and unemployed¹¹ (see, for example Schneider, Bloom & Hereema, 2007; Lamb, Weinberger & Gross, 2004; MacDonald et al., 2014; Sullivan, Burnam, & Koegel, 2000). These impediments are particularly significant to MHCs, as "without adequate attention paid to the contributory effect of social disadvantage, there is a danger of a 'revolving door' between correctional, welfare and mental health systems" (Sheldon et al., 2006, p. 255). Unstable living conditions can serve as barriers to clinical progress in addressing mental and psychological conditions (Macdonald et al., 2014). Equally important, they are recognized as predictors of further criminal activity. For example,

⁹ Redlich (2005) further recognizes that the failure of legal actors to instruct clients in a comprehensible manner is a common cause for participant non-compliance.

¹⁰ In particular, MHCs tailor the specific language used in court orders. This is further examined in section 3b, "Verbal and Non-Verbal Communication".

¹¹ An Ontario study evaluated the complex association between legal involvement and mental illness, and found that about one in five consumers of formal community mental health programs had at least some contact with the legal system during the research year, and that unstable housing was predictive of legal involvement (Sheldon et al., 2006, p. 249).

The stress of being homeless, the overwhelming mental health needs in the face of a deficit of resources and diminished coping abilities may exacerbate previous mental health challenges and worsen illness which too frequently make situations ripe for criminal involvement (MacDonald et al., 2014, p. 12).

In response, MHCs seek to address participants' housing an employment by connecting them with resources for job training, supported living, and housing outreach (Heilbrun & Griffin, 1998; MacDonald et al., 2014). This process of connecting individuals to resources is further explored below.

Indicator 1C) Collaboration with Community Resources.

The success of MHCs is ultimately “predicted by the strength of the essential services found in the community” (Watson et al., 2001, p. 481). MHCs must work closely with existing community based services and supports to address underlying disorders and factors that might impede success (Watson et al., 2001). Therefore, “in its ideal form, a mental health court is driven and coordinated by community resources, mental health services, public sentiment, and a criminal court system all working together” (Talesh, 2007, p. 112).

Participants can be linked to services and programs in a number of ways. The literature suggests that the most common method of achieving such links is through the use of diversion (Schneider, Bloom & Hereema, 2007). Alternatively, those who do not qualify or wish to participate in diversion can be assigned a service coordinator or social workers that connects PMI with appropriate supports (Winick, 2002). Participants that are particularly difficult to locate (such as homeless individuals) can be reached through assertive community treatment (ACT) (Schneider, Bloom & Hereema, 2007).¹² Finally,

¹² ACT provides “intensive treatment, rehabilitation and support services for individuals with serious mental illness and complex needs who find it difficult to engage in other mental health

some MHCs have the ability to mandate community mental health treatment¹³ (Redlich et al., 2005).

Although available services and programs vary with each court location, modalities typically include: day treatment programs, counselling services, psychiatric and psychological treatment, community health services, and outpatient programs (Frailing, 2010; Rottman & Casey, 2000; Schneider, 2010; Talesh, 2007; Watson et al., 2001). With respect to reintegration, supports are available to assist participants with obtaining identification papers, social assistance, clothing, and medication (Schneider, Bloom & Hereema, 2007, p. 176). Finally, as previously mentioned, participants can be connected with substance abuse treatment and assistance with housing and employment (Frailing, 2010; Rottman & Casey, 2000; Schneider, 2008; Talesh, 2007; Watson et al., 2001).

Indicator 1D) Monitoring/Supervision of Participants.

When MHCs engage participants in support or treatment services, it is advisable that a monitoring component be included to increase the likelihood of compliance (Redlich et al., 2005; Schneider, Bloom & Hereema, 2007; Talesh, 2007; Winick, 2002; Wolff, 2002). The research commonly contemplates a diversion model in which participants are required to attend periodic judicial status review hearings where treatment plans and other conditions are reviewed for appropriateness and compliance (Redlich et al., 2010). In addition, the court may offer incentives to reward adherence to

services” (Canadian Mental Health Association, 2015). ACT team members often meet clients daily in their community (e.g., their home or a coffee shop) (Centre for Addiction and Mental Health, 2015).

¹³ For example, MHCs may impose probation with a condition of mandatory outpatient treatment, known as a “conditional release”. They may also ask participants to agree to probation terms to engage in treatment, take prescribed medications, and adhere to other conditions of the court or treatment system (Redlich et al., 2005).

conditions, and impose sanctions for non-compliance¹⁴ (Redlich et al., 2010). As required, such reviews can occur weekly, biweekly, monthly, or quarterly (Redlich et al., 2010).

In theory, the purpose of monitoring is to motivate participants to comply with their assigned regimen. Redlich et al., (2010) conclude: “If MHC participants are required to keep in frequent contact with the judge, their caseworkers, and community treatment staff (who communicate with the court) by attending status review hearings, they will be less likely to relapse and discontinue treatment” (p. 272). Further, this monitoring process allows the courts to identify areas of weakness and non-compliance, and tailor regimens to better suit the participant’s level of comprehension and ability to comply (Redlich et al., 2005). Finally, Goldberg (2011), adds that “such reviews demonstrate to defendants and litigants that the court watches and cares about their behaviour, while providing ongoing opportunities for the court to communicate with litigants and defendants, and respond to their concerns and circumstances” (p. 23).

Principle 2: Promotes Therapeutic Rules and Regulations

Indicator 2A) Voluntary Participation.

Participation in MHC must be voluntary (Herinckx, et al., 2005; Ray & Brooks Dollar, 2013; Redlich, 2005; Redlich et al., 2005; Schneider, 2008; Talesh, 2007; Watson et al., 2001; Winick, 2002). Eligible¹⁵ participants are presented with a choice to participate, or to proceed with traditional court adjudication (Herinckx, et al., 2005;

¹⁴ Participants who adhere to treatment programs for their duration generally have their cases dismissed, or sentences significantly reduced. Participants who do not comply or finish the program may have their case return to the traditional court adjudication (Schneider, Bloom & Hereema, 2007).

¹⁵ Eligibility varies amongst MHCs, whereby, “different courts have different (or multiple) entry points to the criminal prosecution process and different entrance requirements” (Schneider, Bloom & Hereema, 2007, p. 3).

Watson et al., 2001), and are permitted to withdraw from MHC and return to the traditional court adjudication at any point without penalty (Ray & Brooks Dollar, 2013; Schneider, 2010; Watson et al., 2001).

Voluntary participation is an essential component of the MHC for two reasons. First, it is arguable that enforced treatment in Canada would violate participants' civil liberties, and result in foreseeable challenges under the *Canadian Charter of Rights and Freedoms* (see Schneider, Bloom & Hereema, 2007, p. 87). Second, prior research unambiguously establishes the therapeutic value of choice – that active participation and adherence to treatment regimens are more likely when engaged through choice rather than coercion (Casey & Rottman, 2000; Redlich, 2005; Schneider, 2010). Thus, success ultimately rests on the participant's desire and willingness to engage, and inclinations toward coercion must be viewed as futile.

Indicator 2B) Teamwork.

MHCs commonly adopt a “multidisciplinary team approach”, which involves the various court actors¹⁶ (Schneider, Bloom & Hereema, 2007; Ray & Brooks Dollar, 2013; Redlich et al., 2005; Talesh, 2007; Winick, 2002). The roles of MHC actors are described as “less adversarial as in traditional court, with an emphasis on enabling the defendant to gain access to treatment and other supports” (Boothroyd et al., 2003, p. 56). Aligned with this common goal, MHC actors collaborate throughout the court process to share and discuss their knowledge regarding the accused, their underlying disorders, details surrounding the offense, and potential impediments to success (Boothroyd et al., 2003;

¹⁶ Legal actors involved in the team process include: the judiciary, the Crown attorney's office, duty counsel, defence bar, a case manager and other providers, mental health specialists, forensic psychiatrists, bail program personnel, and the designated hospital, if applicable (Schneider, Bloom & Hereema, 2007; Ray & Brooks Dollar, 2013; Redlich et al., 2005; Talesh, 2007; Winick, 2002).

Goldberg, 2011; Lamb, Weinberger, & Gross, 2000). Collaboration allows MHCs to tailor informed and best-fitting responses to the offense (Boothroyd et al., 2003; Goldberg, 2011).

Indicator 2C) Relaxed Courtroom Environments.

The literature emphasizes that MHCs relax traditional courtroom rules and procedures (Boothroyd et al., 2003; Goldberg, 2011; Redlich, 2005). In so doing, they endeavour to accommodate participants' unique needs and eliminate these elements of the court that might intimidate individuals from attending or participating in the court (Barron, Hassiotis, & Banes, 2004). As stated by Goldberg (2011), the "rules of evidence, procedure, and courtroom etiquette are often relaxed to facilitate the participation of the mentally ill offender" (p. 10).

The literature describes interactions within MHCs as informal (Redlich et al., 2005). For example, Boothroyd et al., (2003), suggest that speaking order is not controlled in the MHC and, unlike traditional criminal courts, individuals are not reprimanded for speaking out of turn. As a result, there are often private conversations between defendants and other court participants, including the public defender or mental health consultants (Boothroyd et al., 2003). Further, defense attorneys are able to take their clients out of the courtroom to discuss matters in a calmer setting (Shoaf, 2004).

In addition, MHCs are more relaxed with respect to non-adherence, recidivism, and failures to appear before the court (Redlich, 2005; Schneider, 2010). This exemplifies that MHCs recognize a number of factors that can interfere with participants' ability to comply with court orders. Further, the courts recognize relapse as a normal and expected occurrence in rehabilitation. In acknowledgment of these factors, MHC expectations are

relaxed, and sanctions are generally not imposed for relapse and recidivism¹⁷ (Redlich, 2005; Schneider, Bloom & Hereema, 2007). Finally, MHCs grant greater leniency with respect to court attendance, recognizing that PMI face obstacles that are likely to compromise their ability to both remember court dates and obtain transportation to them (Redlich, 2005).

Indicator 2D) Assistance throughout MHC Process.

The literature recognizes the criminal justice system as particularly complex and overwhelming for PMI (Wolff, 2002). In response, MHCs align participants with individuals who serve as court supports, and who guide and assist individuals throughout the court process (Schneider, 2008; Schneider, Bloom & Hereema, 2007; Wolff, 2002). Support providers can take the form of court coordinators, support coordinators, or community-based case managers, and assignment generally occurs at the initial stages of booking or arraignment, where accused individuals are first identified with a mental illness (Schneider, Bloom & Hereema, 2007; Wolff, 2002).

At the outset, court support providers give participants an overview of the “criminal process, charges, and options” (Wolff, 2002, p. 433). In addition, they guide participants through court procedural stages, including: bail hearings, the assessment of fitness, treatment orders, disposition hearings, guilty pleas, sentencing and diversion (Schneider, 2008; Schneider, Bloom & Hereema, 2007). Assigned support providers can help PMI understand the outlined stages of the court, familiarize them with proceedings

¹⁷ For example, according to Schneider, Bloom & Hereema (2007), “non-compliance with a diversion program should not attract criminal sanctions” and, rather, should be first met with “further reassurance and support” (p. 230).

and court etiquette, and prepare them for occasions where their participation is required¹⁸ (Goldberg, 2011). Also, facilitative assistance is commonly extended to the family members, whereby designated support providers will “liaise and meet with family members of mentally disordered accused to educate them about the necessary process their family member is about to undergo, as well as to help them assist their family member in executing the plan” (Schneider, Bloom & Hereema, 2007, p. 177).

Indicator 2E) Inclusion of the Accused.

MHCs incorporate the accused individual’s input throughout the decision making process (Cosden et al., 2003; Goldberg, 2011; Ray & Brooks Dollar, 2013; Winick, 2000). In so doing, courts “encourage the individual's active involvement in both the negotiation and design of the rehabilitative plan, providing as great a degree of choice concerning the details as is possible in the circumstances” (Winick, 2002, p. 1084). Participants are thereby granted a platform to express their wants and needs, and to actively negotiate dispositions in line with their current circumstances (Goldberg, 2011; Winick, 2002).

As a result, involving the accused has the potential to enhance their motivation to succeed¹⁹, as it grants “‘a sense of ‘voice’ (the ability to tell their story), and ‘validation’ (the feeling that what they have said has been taken seriously by the judge or hearing officer)” (Goldberg, 2011; Wexler, 2002, p. 1086). This, in turn, fosters a sense of

¹⁸ For example, Paradine (2000) suggests court support providers can engage participants in role-plays for the various stages of the court, including direct questions to prepare participants for court interactions.

¹⁹ Goldberg (2011) states “direct engagement enables judges to motivate and influence defendants to make progress in treatment” (p. 23). In particular, “when judges speak directly to court participants – and, in turn, listen to them – they can inspire trust, motivate change, give participants a sense of voice and dignity, enhance progress and healing, and make court procedures more relevant to participants’ lives” (Goldberg, 2011, p. 29).

inclusion, whereby participants feel they have contributed to the outcome, and are therefore more likely to see it as fair (Winnick, 2002). Even when they do not necessarily agree with court orders, Winick (2002) suggests that this sense of inclusion increases participants' willingness to comply.

Indicator 2F) Inclusion of Support Systems.

Where possible and appropriate, MHCs strive to include the participant's support system, including family and caregivers, throughout the court process (Schneider, 2008; Wexler, 1993). For example, support systems are often afforded input throughout the decision making process, where they are invited to share and discuss their knowledge of the accused in that "...their input, concerns and needs are a key to understanding the candidates history and current needs" (National Criminal Justice Reference Service, 2000). These support systems tend to be particularly knowledgeable about information that can be difficult to retrieve, such as the participant's medical history and living conditions (Goldberg, 2011; National Criminal Justice Reference Service, 2000).

Beyond having input, the presence of support systems can improve participants' commitment to, and fulfillment of, court orders. For example, Winick (2002) suggests that support persons "should be included in the process during which the individual makes a commitment to participate in treatment, and that commitment should be made in a formal and relatively public way" (p. 1084). Moreover, Wexler (1993) suggests that public commitment leads to greater adherence than does private commitment. In theory, public adherence motivates individuals due to anticipated self-disapproval, as well as the anticipated disapproval of their family and caregivers (Wexler, 1993). Thus, insofar as

patients can be encouraged to inform one or more people of their intentions to follow the treatment regimen, an increased likelihood of adherence is proposed.

Principle 3: Therapeutic Interactions

Indicator 3A) Therapeutically Enhanced Roles.

In describing the important role of legal actors in facilitating a therapeutic experience, the MHC literature outlines a number of characteristics that enhance therapeutic interactions with PMI. First, they must appreciate that participants often experience emotional difficulties, including “pain, shame, sadness, and anxiety in coming to terms with the existence of psychological or behavioral problems that have produced criminality and the victimization of others” (Winick, 2002, p. 1068). Actors should acknowledge these adversities, and respond in ways that convey empathy and compassion (Goldberg, 2011; Talesh, 2007). In particular, Goldberg (2011) further suggests that actors should: ask participants questions that indicate an interest in their position; relate events to participants’ lives; acknowledge not only the facts of a case, but people’s emotional responses to cases or court events; and convey a sense of personal care for the participant. Winick (2002) adds that MHC judges should “convey both an intellectual response to the individual, communicating that she understands the individual's predicament, and an emotional response, communicating that she shares the individual's feelings” (p. 1069).

Second, actors should demonstrate encouragement and support for MHC participants which, in turn, can “spark the motivation of the individual to achieve rehabilitation and to increase compliance with treatment” (Winnick, 2002, p. 1090). In this regard, verbal praise and applause are common and effective strategies for

demonstrating support and encouragement of court participants (Goldberg, 2011; Winick, 2002). In addition, MHC judges will congratulate participants at status review hearings for accomplishments, such as “going to scheduled clinic appointments and maintaining the components of their treatment plans” (Redlich, 2005, p. 607). Judges provide complementary support, focusing on a participant’s future potential rather than past behaviours (Goldberg, 2011, Winnick, 2002).

Third, respect is a critical component of interaction that ultimately increases effective communication in the MHC. Goldberg (2011) describes this as a dynamic, whereby:

A judge’s respect for a defendant can in turn generate that defendant’s respect for the judge and courtroom. This mutual respect can be the foundation on which to create a judge-defendant relationship that in turn can positively influence a defendant’s progress and outcomes (Goldberg, 2011, p. 34).

In support of this dynamic, MHCs strive to treat participants consistently and fairly, requiring legal actors to acknowledge and set aside their personal biases and predetermined ideas (Goldberg, 2011). Further, MHC actors endeavour to refrain from rushing or interrupting participant input, or otherwise diminishing the importance of their contributions (Goldberg, 2011). For example, judges will stop speaking “at appropriate intervals... signaling to the individual that what she has to say is important” (Winick, 2002, p. 1071).

Finally, MHC actors are encouraged to increase their “approachability” (Wexler, 2000; Winick, 2002). Mental illness is frequently coupled with anxiety, which can make the already intimidating legal system more daunting (Schneider, Bloom & Hereema, 2007). In addition to the challenges posed by their illness, feeling afraid or unwelcome

can potentially undermine successful participation in the court²⁰. In response, the literature reflects that legal actors endeavour to be warm and approachable, and otherwise present themselves in ways that invite PMI to actively participate and seek assistance (Wexler, 2000; Winick, 2002). In this regard, Winick (2002) suggests: “Just as physicians need to develop their ‘bed-side manner,’ judges need to develop what can be termed their ‘bench-side manner’” (p. 1069). Made explicit, judges endeavour to create a space where offenders feel comfortable expressing their emotions about their problems and dealing with them effectively (Winick, 2002).

Indicator 3B) Verbal and Non-Verbal Communication.

The literature differentiated between language that can be therapeutic and anti-therapeutic in a MHC setting. It recognizes that the justice system is characterized by complex and highly specialized language that can create intellectual barriers between participants and the court (Goldberg, 2011). The failure of legal actors to instruct clients in a comprehensible manner is cited as a cause of non-compliance for PMI (Petrucci, 2002; Redlich, 2005; Wexler, 1993).

Thus, effective MHC actors avoid using language that is particularly formal, vague, or complex (Goldberg, 2011; Petrucci, 2002, Redlich, 2005). Also to be avoided is “legalese” or legal jargon, the use of acronyms, and sarcasm (Goldberg, 2011; Petrucci, 2002; Wexler, 1993). Rather, effective actors adopt language that is simple, straightforward, and tailored to the participant’s specific level of comprehension. In particular, Goldberg (2011) recognizes simplified language through the use of short

²⁰ For example, “offenders will be less likely to recognize their problems and resolve to deal with them effectively if they perceive the judge to be cold, insensitive, or judgmental” (Winick, 2002, p. 1065). Further, Wexler (1993) emphasizes that a “moralizing, high powered stance” may intimidate the offender and undermine full participation (p. 279).

sentences and contractions (e.g., *it's* as opposed to *it is*); active rather than passive voice (e.g., *We understand* as opposed to *It is understood*); and the use of first and second person in place of third person (p. 45).

Additionally, the literature identifies the value of avoiding harmful or insensitive language, including labels, stereotypes, criticism, and threatening or punitive language (Kondo, 2001; Powel & Bartholomew, 2003). Failure to do so can intimidate and discourage individuals from actively participating and contributing to the MHC process. Effective actors are identified as utilizing language that is positive, uplifting, and supportive in nature (National Criminal Justice Reference Service, 2000). Further, Wexler (1993; 2015) identifies therapeutic benefit in using inclusive conversation in place of directive terminology. For example, statements commonly used in traditional criminal courts such as "*what you are to do is*" can be replaced by "*what you have agreed to try is*" (Wexler, 1993, p. 293).

The literature also identifies therapeutic non-verbal communications that actors employ in the MHC. In particular, it suggests that legal actors should demonstrate interest in what is being said, and provide their undivided attention to the participant (Wexler 2000). This can be demonstrated by sitting up straight, refraining from other activities such as writing, and maintaining eye contact throughout interactions (Goldberg, 2011; Schneider, Bloom & Hereema, 2007). Further, actors consider the impact of facial expressions²¹ and, in particular, attempt to "look open to communication but still impartial, lift the eyebrows and slightly relax the mouth" (Goldberg, 2011, p. 37).

²¹ Goldberg (2011) notes that effective legal actors are aware of their facial expressions, which can unwittingly demonstrate disapproval or judgment. For example, "a so-called 'neutral' expression can come across as more severe than intended due to the drawing together of the eyebrows in concentration" (p. 37).

Finally, conversation is conducted informally and conversationally, and actors adopt “tones that convey concern for the defendant as a person, without pity, disdain, or obvious condescension” (Bloom & Hereema, 2007; Goldberg, 2011, p., 34).

CHAPTER THREE: METHODS

Chapter three outlines the methods used to conduct this study. The first section outlines the case study framework, which is followed by a detailed description of the research setting, sampling techniques, and the sample. The data collection procedures, including field observations and semi-structured interviews and the multi-step coding process are discussed. The last section presents remarks on the researcher's reflexivity and the ethical considerations taken into account.

Case Study Methodology

This study employs a case study design framework, defined as “an in-depth exploration from multiple perspectives of the complexity and uniqueness of a particular project, policy, institution, programme or system in a ‘real life’ context” (Simons, 2009, p. 21). In other words, case studies are a design of inquiry whereby the researcher develops an in-depth analysis of a case (Creswell, 2014). Cases may take the form of a single organization, a single location, a person, or a single event, and are bound together by time and activity (Bryman & Bell, 2015; Creswell, 2014). Within the study, “the case is an object of interest in its own right and the researcher aims to provide an in-depth elucidation of it” (Bryman, 2012, p. 69).

Using this methodology, researchers collect data over sustained periods of time (Creswell, 2014; Yin, 2009). Case studies may be qualitative or quantitatively based, and utilize a variety of data collection procedures, including analysis of documents, archival records, and artifacts—as well as conducting fieldwork, interviews and observations—or any combination of these (Rowley, 2002; Yin, 2009). Baxter & Jack (2008) suggest that case studies should utilize multiple methods of data collection to ensure the topic is “not

explored through one lens, but rather a variety of lenses which allows for multiple facets of the phenomenon to be revealed and understood” (P. 544).

Strengths

Case study data are normally richer and more in-depth than other methodologies, and are particularly useful when investigating issues that require holistic, in-depth responses (Noor, 2008). Case studies are also appropriate to explain the complexities of real life situations, which may be difficult to capture through experimental or survey research (Baxter & Jack, 2008). In particular, they allow researchers to obtain multiple perspectives in order to explore the deeper meaning behind why a particular action occurred (Simons, 2009). For example, Gummesson (1988) notes that case studies “enable[s] us to study many different aspects, examine them in relation to each other, view the process within its total environment and also use the researchers’ capacity for ‘verstehen’” (p. 76).²² Moreover, case studies can be particularly useful to review and improve practice, which may subsequently inform policy development (Merriam, 1998; Simons, 2009). They are also utilized in instances when the larger sample or similar participants are not accessible (Simons, 2009).

Limitations

Foremost, case studies are often criticized for their inability to produce generalizable findings (Bryman & Bell, 2015; Noor, 2008; Thomas, 2011). However, this potential weakness is limited to studies that intend to produce generalizable findings, and is further contested by Noor (2008), who suggests, “case studies also allow generalizations as that result of findings using multiple cases can lead to some form of

²² Verstehen refers to “understanding the meaning of action from the actor's point of view” (Sociology Index, 2015).

replication” (p. 1603). Further to this argument, “the method of generalisation for case studies is not statistical generalisation, but analytical generalisation in which a previously developed theory is used as a template with which to compare the empirical results of the case study” (Rawley, 2002, p. 20).

Additionally, case studies are criticized for their lack of scientific rigor (Noor, 2008). Cook and Campbell (1979) note the absence of specific requirements to guide case study research, which expose it to criticism, especially from a quantitative perspective (Cook & Campbell, 1979). Moreover, given their in-depth nature, case studies are susceptible to researcher bias (Cook & Campbell, 1979).

Use of Case Studies

Rowley (2002) identifies three factors that determine the best research methodology for a given study, including: (a) The types of questions to be answered; (b) The extent of control over behavioural events; and (c) The degree of focus on contemporary as opposed to historical events. Addressing these factors, Yin (2003) suggests case study designs should be adopted when: “(a) the focus of the study is to answer “how” and “why” questions; (b) a researcher has little or no control over behavioural events; and (c) the focus of the study is a contemporary (as opposed to entirely historical) phenomenon” (p. 2).

Thus, a case study framework was appropriate for this study for the following reasons. First, this study addresses both “how” and “why” questions. In particular, it seeks to determine *how* the court applies the principles of therapeutic jurisprudence, and later explores *why* certain indicators are highly and weakly consistent with the literature. Second, the researcher did not seek to manipulate or control the research environment.

Rather, the researcher required an accurate portrayal of the court's functions, procedures and interactions as to accurately assess its application of therapeutic jurisprudence.

Moreover, the study examined contemporary phenomenon, observing and inquiring about the application of the therapeutic jurisprudence in the present day MHC.

Setting

The Ontario Court of Justice (OCJ) is a statutory court granted jurisdiction through provincial and federal law (Ontario Court of Justice, 2005). Over the years, the OCJ developed a series of specialized courts, including MHCs, which seek to address PMI in the criminal justice system. The observed MHC, located in South-Western Ontario, commences on Tuesdays in courtroom 104. The court begins at 10 am, and generally adjourns between 2:00 and 3:00 pm. Access to the MHC did not require permission for outside observers, as criminal courts are open to the public.

As depicted in Figure 1, upon entering the MHC, wooden benches form three columns down the left, right, and centre of the room, which serve to accommodate accused individuals and any additional observers. A barrier, known as the "bar", separates this seating area from the back half of the courtroom. Beyond the bar, there are two large desks facing the judiciary bench, divided by a speaker's podium. Defence counsel and the accused occupy the left side, while the Crown attorney and MHC coordinator share the right. The judiciary bench is located at the centre, back of the courtroom, with the entrance to the judge's chambers at its immediate left. A testimony stand is positioned to the right of the judiciary bench.

Between the observation area and the judiciary bench, a designated work area seats two clerks and one courtroom transcriptionist. A prisoner's box is located on the left

side of the courtroom, with a security officer's desk located to its right. Between the prisoner's box and desk, a door leads to the court holding rooms, where prisoners are detained when required.

A number of legal actors are central to the functioning of the MHC. The MHC has three permanent judicial officers who work on a rotating basis. It is noteworthy that, during the researcher's observations, one of these judicial officers retired. As such, the researcher observed two additional stand-in judiciary officers, one of whom consistently filled in for the MHC. The researcher further observed the Crown attorney's team, including one appointed team lead and two support Crown prosecutors, as well as various defense lawyers, and three duty counsel who are appointed by the court. Additional court supports include two clerks who are assigned to the MHC, a Constable for court security, one MHC coordinator from the Canadian Mental Health Association, and a range of representatives from various community services and resources.

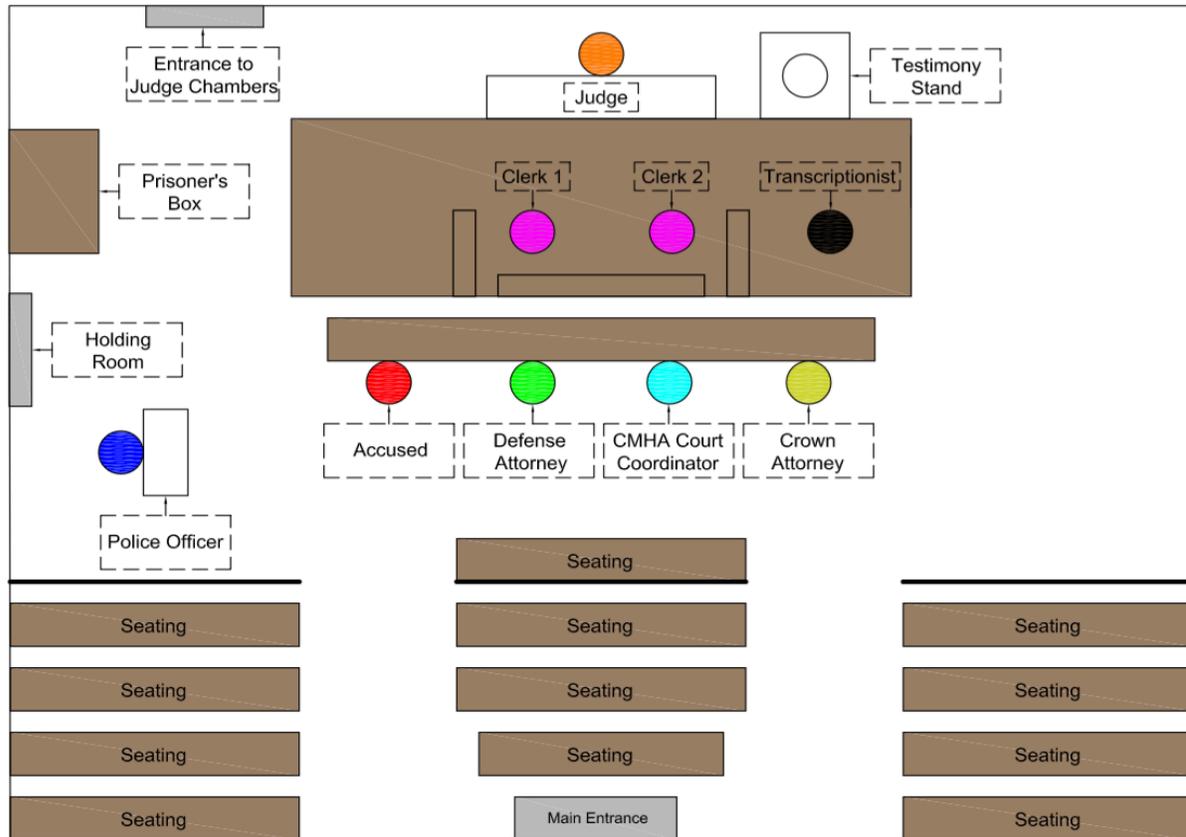


Figure 1: Courtroom Physical Layout

Sampling and Recruitment Procedures

Participation in this study required that individuals have: a) some level of interaction with the accused; b) direct involvement with the court; or alternatively, c) consistent attendance and observation of the MHC. These criteria ensured participants could discuss the interactions between legal actors and the accused, as well as knowledgably answer questions pertaining to the court’s rules, procedures, and goals.

The techniques of purposive sampling, with an initial gatekeeper, and snowball sampling were used in this study to select interview participants. Purposive sampling is a non-random method of selections where the researcher seeks to obtain a sample “due to the qualities the informant possesses” (Tongco, 2007, p. 147). The initial gatekeeper in

this study was a member of the staff who established contact with the Crown attorney, the MHC coordinator, and a designated MHC clerk.

From here, this study utilized snowball sampling, which asks individuals to suggest any number of relevant individuals to include in the sample (Goodman, 1961). For this study, individuals were asked to recommend participants who met the aforementioned criteria. Using this method, the researcher obtained six additional participants.

In both stages of sampling, potential candidates received recruitment letters outlining the purpose of the study (Appendix A). Individuals who expressed interest in participating were provided information letters, which further explained the purpose of the research and their role as a participant (Appendix B). Prior to conducting interviews, participants were granted an opportunity to voice any outstanding questions or concerns, and a written informed consent to participate was obtained (Appendix C).

Sample

The sample consisted of ten participants whose involvement covers the spectrum of services and functions provided by this MHC. In sum, this included two MHC judges, the Crown attorney, two defense lawyers, one defense lawyer who commonly serves as duty counsel, one MHC coordinator²³, one MHC support coordinator, one designated MHC clerk, and one community resource representative. Affiliation with the MHC was measured in years, ranging from 1-10 with an average of 6.7.²⁴

²³ Of note, the court coordinator has a degree in Social Work.

²⁴ This MHC initially sat in 2005.

Table 2: Sample Characteristics

PARTICIPANT ROLE	PSEUDONYM	YEARS OF EXPERIENCE
Judge	Roger	10
Judge	John	10
Crown Attorney	Renee	3
Defence Lawyer	Jeff	10
Defence Lawyer	Greg	9
Defence Lawyer/Duty Counsel	Larry	5
Court Coordinator	Jane	5
Support Coordinator	Claire	1
MHC Clerk	Sam	7
Community Resource	Leslie	7
Average		6.7

Data Collection

Data collection commenced upon receiving approval from the University of Waterloo's Office of Research Ethics on April 2, 2015. The study utilized two data collection methods: participant observation and semi-structured interviews. Data collection occurred over a period of four months, from April to July 2015. This allowed the researcher to allot a minimum of two days worth of observations for each of the three designated MHC judges, and further granted some flexibility with interviews due to respondents' busy schedules.

Participant Observation

The researcher conducted a total of 25 hours of participant observations adopting the field role of complete observer. Specifically, the researcher's identity was unknown to individuals other than those interviewed. Observations were conducted on Tuesdays from 10 am until the court adjourned, which typically occurred between 2:00 and 3:00 pm, and spanned over the months of April, May, and June 2015.

The researcher first conducted two days (7 hours) of preliminary observations. Information from these observations was not included in the findings, but rather, granted insight into the inner workings of the MHC. In particular, the researcher sought to understand the structure of the courtroom, including the rules, the nature of the proceedings, and the various actors involved. Further, the researcher sought to determine how interactions between legal actors and the accused could be observed. The researcher established that such interactions could be observed throughout the court proceedings, pre-trial meetings, and during recess breaks in the courthouse hallways.

Following this, the researcher initiated 25 hours of non-participant observation. To determine how the court applies each principle of therapeutic jurisprudence, the researcher recorded observational field notes to capture data on how the court encouraged rehabilitation and reintegration; the rules and procedures of the court; and interactions between legal actors and PMI. Observations further included the general surroundings of the courtroom, as well as participants' responses to certain treatment, procedures, and sentencing outcomes. For example, the researcher made note of any elements of the court or specific interactions that triggered negative reactions, such as crying.

Moreover, the researcher originally intended to detail the number, and type of cases observed. However, this was somewhat impeded by the court's fast and frequent adjournments, which often omitted details of the offence. Including these adjournments, the researcher viewed approximately 67 matters, which included: thefts, disorderly conduct, harassment, stalking, assault, sexual assault, battery, public mischief; breach of probation, uttering threats, and aggravated assault causing bodily harm.

Observations were recorded with a notepad, and were immediately transcribed following the court's adjournment. This allowed the researcher to include any relevant information omitted from the handwritten notes due to the quick pace of the court. This further increased the accuracy of the events portrayed, as the researcher was more likely to remember relevant or significant details. All field notes were stored securely in electronic files that were encrypted and password protected. The hand-written notes were stored in a locked file in the researcher's office. Only the researcher and the research supervisor had access to the data.

The intent of conducting participant observation was twofold. First, given the size of the MHC, a limited number of staff was available for interviews. As such, observations were conducted to supplement the interviews rather than to serve as an equivalent source of data. Second, interview questions inquired about actors' perceptions of the court and their interactions with PMI. This posed the potential for bias, whereby perceptions might not reflect the realities of the MHC. Direct observations allowed the researcher to address any major inconsistencies between observations and the interview data.

Semi-Structured Interviews

The researcher conducted ten semi-structured, face-to-face interviews. Interview questions were presented in a way that provided guidance, yet allowed conversation to flow freely and for participants to introduce any supplementary information of relevance (Huberman & Miles, 2002). Interviews were scheduled at a place, day, and time convenient for each participant, including locations such as personal offices, consultation

rooms in the courthouse, the courthouse cafeteria, judge's chambers, and a Tim Horton's coffee shop.

Interviews were audio-recorded and supplemented with handwritten notes. This allowed the researcher to document certain themes that emerged throughout the interview, and further served as a backup in the event that the audio-recorder failed. Using Microsoft Word 2007, the researcher manually transcribed the audio-recording and typed the hand-written notes immediately following each interview. The researcher checked for errors by reading transcripts while listening to the recorded interviews. This ensured that transcripts were exact and ready for the coding process. The researcher identified the emergence of potential themes at the bottom of each transcribed document, as well as information that had overlapped with other interviews. This served to highlight any significant information, and assist in the preliminary stages of coding.

Interviews consisted of fifteen questions and ranged in length from 45 to 90 minutes (Appendix D). Interviews began with a series of introductory questions inquiring about the respondent's association with the court, the duration of their roles, and general knowledge of therapeutic jurisprudence. Interview questions 1, 2, 3, 4, and 5 respond to the research sub-question 2a: "How does mental health court promote therapeutic solutions? Second, interview question 6, 7, and 8, 9 and 10 respond to the research sub-question 2b: "How does mental health court apply therapeutic rules and procedures?" Last, interview questions 11, 12, 13, and 14 respond to the research sub-question 2c, "How does mental health court facilitate therapeutic interactions?" A final question concluded the interview by asking participants to reflect on the information they provided, and to assess "what works" and "what does not work" in the MHC. Upon

answering each of these three sub-questions, the researcher was later able to answer Research Questions 1 and 2.

Following the completion of interviews, the researcher conducted a follow-up interview on June 22, 2015 with one participant. This was to clarify significantly discrepant responses with respect to the indicators “teamwork”, “community resources”, and “balanced responses”. The researcher confirmed the individual’s responses, and included any and all discrepant information in the findings section. Following this, feedback letters were distributed to each participant’s email address thanking them for their time and involvement. Participants who indicated their interest in receiving the results from this study will do so in the form of a summary report upon completion of the researcher’s thesis defence.

Data Analysis

According to Saldaña (2009) there is no “best” way to code qualitative data. The various methods of analysis can: “(a) develop codes *only* on the basis of the emerging information collected from participants; (b) use predetermined codes and then fit the data to them; or (c) use some combination of emerging and predetermined codes” (Creswell, 2014, p. 199). For this study, the researcher initially sought to utilize the first option, developing codes on the basis of emerging information. However, in the preliminary cycle of coding, the researcher recognized the need to modify this method of analysis. This process is described below.

For this study, respondents were asked a series of broad questions pertaining to the three principles of therapeutic jurisprudence. Interviews were supplemented with observations of the court. The data were examined to identify the ways in which the court

applies each principle. Initially, the researcher sought to develop codes only on the basis of emerging information from the data. The resulting codes would be compared to the MHC Model to identify areas of congruency and divergence. This comparison would address Research Question 2.

Using the analysis software NVivo 10, the researcher planned to analyze the data in two cycles. The first cycle utilized open coding, which required the researcher to review transcripts line-by-line to highlight information that was “interesting, potentially relevant, or important to [the] study” (Merriam 1998, p. 180). Information was “coded” with descriptive terminology, including original labels as well as concepts from the literature. The researcher developed a codebook to track and organize preliminary codes. The participant observations and interview data were analyzed simultaneously.

To an extent, the researcher expected the data to overlap with the MHC Model indicators. In particular, it was likely that respondents would address certain indicators as topics of discussion. However, this analysis unexpectedly revealed extensive congruency between the data and the MHC Model. In other words, respondents rarely discussed topics outside the scope of the MHC Model indicators. Thus, throughout the analysis, the researcher was consistently labelling data with codes that were synonymous with the MHC Model indicators.

To address this issue, the researcher recognized the need to modify the method of analysis. Given the sufficient congruency, it was logical to use these MHC Model indicators as predetermined codes to guide the analysis. Such would allow the researcher to organize information accordingly, and maintain consistent terminology throughout the study. These included: Consideration of Mitigating Factors; Collaboration with

Community Resources; Monitored Progress; Voluntary Participation; Teamwork Approach; Relaxed Rules/Procedures; Assistance throughout Court Process; Participant Inclusion; Family/Caregiver Inclusion; Therapeutically Enhanced Roles; and Verbal/Non-Verbal Communication. The analysis would also seek to identify emergent codes, which would include examples as to how the court applies any of the three principles that were not described by the literature.

Upon modifying the plan of analysis, the researcher revisited the data to conduct the first cycle of open coding. Once again, the researcher scanned the data line by line to identify any important or potentially relevant information. Emergent themes were coded with descriptive labels, and information relevant to the predetermined codes was coded accordingly. The researcher conducted this cycle of analysis multiple times to ensure all of the relevant data had been recognized.

The second cycle of analysis utilized “pattern coding”. During this process, smaller codes are collapsed under larger umbrella categories. This is an essential step in the coding process, as “coding is not just labeling, it is linking” (Saldaña, 2009, p. 8). In particular, pattern coding collects similar information, which in turn, makes relationships in the data more apparent.

Foremost, a number of the MHC Model indicators addressed sub-topics. For example, “Verbal/Non-Verbal Interaction” outlined specific sub-topics as to how the indicator can be applied, describing the use of language, tone of voice, and body language. The first cycle of coding produced a number of sub-topics, which were originally labelled as distinct codes. During this second cycle, these sub-topics were collapsed under umbrella codes to maintain consistency throughout the study. For

example, the first cycle developed codes such as: “sympathy”, “empathy”, “respect”, and “approachability”. In the second cycle, these were identified as sub-topics, and were collapsed under the umbrella code “Therapeutically Enhanced Roles” (see Figure 3.2). A similar process was conducted for the codes: “Consideration of Mitigating Factors”; “Relaxed Rules/Procedures”; and “Verbal/Non-Verbal Interactions”.

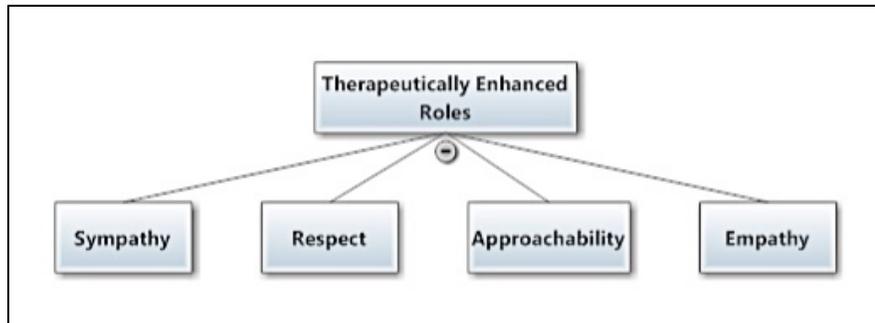


Figure 2: Pattern Coding Example 1

Further, in the first cycle of coding, respondents consistently described the court’s rotating staff as particularly detrimental to participants’ progress in the court. Respondents identified the various ways they attempt to address this potential impediment, and introduce an element of consistency into the MHC. For example, individuals identified the need for “consistent appearance before the judge”, “designated duty counsel”, and “consistency courtroom expectations”. The various codes were pooled together into the larger umbrella code “Consistency and Continuity” (see Figure 3.3).

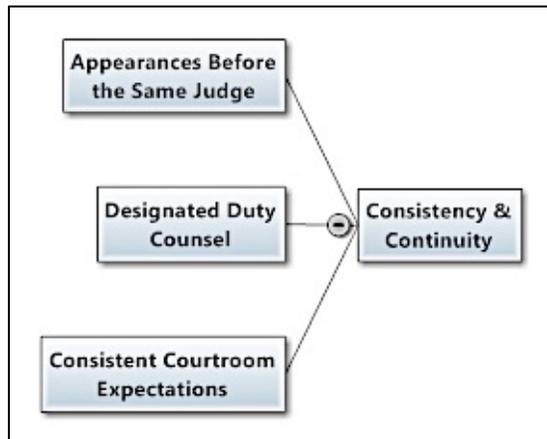


Figure 3: Pattern Coding Example 2

In summary, the coding process produced two groups of codes. The first group of codes share titles with the indicators outlined in the MHC Model. The unexpected congruency presented the data in a way that allowed the researcher to comment on the degree to which responses aligned with the literature. This analysis also produced two emergent codes that serve as original contributions as to how the MHC applies the principles of therapeutic jurisprudence. All codes are presented in the findings sections.

Reflexivity of the Researcher

Qualitative research can pose a threat whereby the researcher’s personal inclinations or values may explicitly bias the proceedings and the findings of the study (Ritchie et al., 2014). The potential for bias can never be truly eliminated, as “there is no completely ‘neutral’ or ‘objective’ knowledge” (Ritchie et al., 2014, p. 22). However, researchers can minimize the potential for bias by recognizing their role in the research process, referred to in the social sciences as reflexivity. In particular, reflexivity requires the researcher to “reflect on their role in the study and their personal background, culture, and experiences [which] hold potential for shaping their interpretations, such as the themes they advance and the meaning they ascribe to the data” (Creswell, 2014, p. 186).

Prior to this study, I had limited knowledge of MHCs, and was unfamiliar with the concept of therapeutic jurisprudence. Rather, I was inspired to study MHCs by the case of Ashley Smith, a teenager who died by self-inflicted strangulation on October 19, 2007 while under suicide watch in custody at the Grand Valley Institution for Women (Doria-Brown, 2013). On December 19, 2013, the coroner's jury returned a verdict of homicide in the case of Ashley Smith (Doria-Brown, 2013). The verdict served as a platform to raise awareness about the treatment of PMI in the criminal justice system. At this time, I was required to choose a topic for my Master's thesis.

At the onset, my position as a researcher did not pose any immediate or apparent biases. However, bias can be introduced throughout the various stages of data collection and analysis (Pannucci & Wilkins, 2010). In particular, throughout the observation process, I was required to use my discretion to categorize certain aspects and interactions of the court as either therapeutic or anti-therapeutic. It was possible that my personal conceptualizations of therapeutic and anti-therapeutic could have influenced these designations. In other words, observations that I considered to be anti-therapeutic might not have been conceived this way by others.

I took a number of precautions to minimize this threat of bias. First, the MHC Model outlined elements of the court that have been identified as therapeutic and anti-therapeutic in prior research. As such, the literature served as a source of guidance, allowing me to reference pre-established conceptualizations of therapeutic and anti-therapeutic rather than solely relying on personal conceptualizations. For example, the literature consistently identified hostility as an anti-therapeutic trait when interacting with PMI. In this instance, I was able to cross-reference the literature to confirm that my

categorization of hostility as anti-therapeutic was supported, and not due to a biased conceptualization.

I further compared my interpretations of the data against participants' responses. For example, throughout my observations, I identified impatience as a particularly anti-therapeutic trait amongst the MHC actors. I referenced this against respondents' interpretations of impatience as presented throughout the interview data. The data confirmed impatience to be consistently recognized as an anti-therapeutic trait among actors working with PMI. Throughout this process, I intended to address any major discrepancies in my interpretations of the data; however, such discrepancy never occurred.

Further, I included thick, rich description in my observation notes. This prevented me from labelling data as therapeutic or anti-therapeutic at the onset. Rather, it required me to consider the details surrounding the particular event. For example, prior to categorizing a rule as "anti-therapeutic", I sought to determine its purpose and whether it was a necessary component of the court. This process allowed me to contextualized and understanding information that might have otherwise been inappropriately deemed anti-therapeutic.

Ethical Considerations

A primary ethical consideration involves obtaining informed consent from all participants in the study. In particular, consent must be based on an honest representation of the purpose and requirements of this study, as well as what participation entails, how data will be collected and analyzed, and future use of research findings (Creswell, 2014). Individuals were informed of these details prior to their participation in this study. In

particular, participants were given information letters, which outlined the purpose of the study, role of participants, data collection, data analysis, ethical considerations, confidentiality agreements, and implications on future research. Prior to each interview, participants were informed of their right to withdraw from the study at any time, and were granted a platform to address any outstanding questions or concerns. The researcher obtained written consent from each participant.

With respect to anonymity and confidentiality, the Tri-council policy statement regarding ethical conduct for research involving humans (TCPS2, 2014) outlines that the dissemination of the research results should not identify participants as it may pose a risk to them. As such, the researcher took specific measures to ensure the privacy and anonymity of participants was respected and protected. In particular, the researcher referenced the court as “located in South-Western Ontario”. Privacy and anonymity of participants was further protected through the use of pseudonyms to reduce the likelihood of disclosing personal information (Creswell, 2014). Further, all identifiers were removed during the transcription process, including any references participants may have made during the interview to themselves, their coworkers, or the court. Together, these measures protect the identity of the court, and further prevent individuals from logically tracing answers back to the staff of the court.

In sum, the interviews did not require participants to disclose any sensitive information, and therefore did not pose more than minimal risk for participation. Further, the researcher’s observations posed little risk to participants, as the courts are open to the public. In no way did the research jeopardize the confidentiality of those observed.

The data from this study will be retained for five years after which it will be permanently deleted from the two storage locations.

CHAPTER FOUR: FINDINGS

Respondents discussed each of the predetermined codes, which allowed the researcher to comment on the level of alignment between interview responses and the literature. Discussions surrounding each indicator both reflected and conflicted with the literature. Further, in many cases, respondents provided divergent responses that impeded such classification. Moreover, the analysis produced two original indicators as to how the court applies the principles of therapeutic jurisprudence. This chapter presents the findings by principle. In so doing, it answers each of the three research sub-questions, including: 2a) How does Mental Health Court promote therapeutic solutions: b) How does Mental Health Court apply therapeutic rules and procedures; and 2c) How does Mental Health Court facilitate therapeutic interactions?

Principle 1: Outcomes Geared to Rehabilitation and Reintegration

The first overarching principle states that therapeutic jurisprudence promotes the provision of services and support that is aligned with rehabilitation and reintegration. Respondents were asked a series of questions to determine how the court achieves these goals. Consistent with the MHC Model, respondents discussed: balanced responses to crime, consideration of mitigating factors, link to community resources, and monitored compliance.

Indicator 1A: Balanced Response to Crime.

To achieve rehabilitation and reintegration outcomes, the literature acknowledged the need for MHCs to balance an appropriate response to the crime with effectively addressing the individual's underlying disorder. Studies reported that MHCs generally rely on diversion programs, which are recognized as mechanisms to satisfy this balance.

Throughout the interviews, respondents consistently acknowledged a need for such balance; however, they disagreed as to whether the associated considerations are weighted appropriately by the court.

The majority of respondents portrayed the MHC as being overly punitive, and argued that, in so doing, it fails to address individuals' underlying disorders and associated needs to the extent it should. In particular, respondents suggested that MHC dispositions rarely differ from those found in traditional criminal courts, and consistently cited probation as the most commonly used disposition.²⁵ Respondents also highlighted that, when necessary, dispositions included incarceration (although it was noted as less frequent than in traditional courts).

Further, all but two respondents disclosed that diversion is uncommon to the MHC. In particular, Jane revealed that a mere 11 participants went through mental health diversion programs in 2015.^{26,27} Claire also acknowledged this infrequency, stating: "Ideally, one of the main sentences that comes out of Mental Health Court should be mental health diversion. Unfortunately, I don't see that often... they're rare in our court." This finding is particularly significant because, as noted, the literature suggests that MHCs regularly utilize diversion as a mechanism to satisfy the balance between responding to the crime and addressing the underlying disorder.

²⁵ Some respondents described probation as a "default" sentence, which the court uses to protect itself in the event of recidivism. For example, Claire stated: "I think sometimes that our Crown attorney leans heavily on the safety to the community, in [the Crown attorney's] view, and the impact on the victims. I think those are two areas that [the Crown attorney] puts a lot of weight on for sentencing... the Crown often are concerned for public safety to a certain degree, but also any sort of backlash if the diversion does not go successfully."

²⁶ This count reflected the diversion rate up to July 2015.

²⁷ A follow up interview revealed that that, as of October 15, 2015, the MHC had accepted 117 individuals into the MHC, 6 of which were granted mental health diversions.

Respondents offered two explanations for the court's limited use of diversion. Foremost, it was stated that participants may not qualify for diversion due to the nature of their offence. The MHC under study is a provincial court, meaning that its scope includes more serious offences that may warrant punitive responses. In addition, the court's discretion can be restricted by mandatory minimum sentences. For example, John described how he is restricted in his sentencing by certain provisions outlined in the Criminal Code of Canada:

Some of the offences are serious, you can't be lenient. But you know, the judge does the sentencing with the input from the people who have worked with this individual. But you can't – there are principles of sentencing you have to apply. You look at the Criminal Code, talks about – look at Section 718 – it sets out the principles of sentencing in 718. Those are principles that I'm guided by. They don't have exclusions, or exculpatory clauses saying, "oh by the way, these don't apply to drug addicts, persons with mental illness... those are the principles that have to be applied to everyone. But, there are still circumstances of the offender.

Roger further discussed how mandatory minimum sentencing compromises the therapeutic potential of the MHC:

There are some cases that have minimum sentences, and this has become a real hot topic of discussion recently. This conservative federal government has removed a great deal of judicial discretion in terms of sentencing, by imposing minimum sentences on a number of charges. In the event that a person is found guilty of an offence which carries a minimum sentence, subject to an argument – lengthy, complex, and very seldom made – that the minimum sentence ought to be declared unconstitutional in relation to this case, the judge's hands are tied. There has been some movement as a result of a recent case in the Supreme Court of Canada dealing with a minimum sentence for a gun charge, but that's clearly restricted only to that case. And so, where I find myself faced with a minimum sentence, my hands are tied generally, and even though I may think that a more therapeutic approach is required, and that this calls for a probationary period, often I can't do it.

As a result, a number of individuals in the MHC may not qualify for diversion due to the nature of their offence. In this regard, mandatory sentences effectively prevent the courts from providing therapeutic alternatives.

Second, respondents discussed the critical lack of resources and the attendant implications for the use of diversion. In particular, a broad array of resources are central to the diversion process, which requires participants to engage in various community-based programs and services designed to address their needs. Without an adequate resource base, the court is constrained from utilizing the diversion option.²⁸

However, despite these limitations, some respondents argued the court does effectively address participants' underlying disorders and associated needs. These respondents highlighted alternative mechanisms that the court adopts in place of diversion. For example, the MHC frequently adjourns matters to grant participants time to engage in treatment that better positions them for sentencing. Roger described this strategy:

Very often with Mental Health Court, we will adjourn things to permit considerable ongoing counselling, to permit a person to find some stability... to get some stable housing, to interact with the CMHA²⁹ or whomever they're responding with, to get reports from psychiatrists, to do everything they can to stabilize themselves and put their best foot forward.

Further, these respondents noted that probation is frequently utilized by the court as a way to effect treatment or counselling by way of a specific term in the probation order. In this regard, Roger stated: "more frequently, we find ourselves engaging in an effort to assist the person in the community by imposing a suspended sentence and probation." In this sense, the court tailors traditional sentences in ways that address participants' needs.

²⁸ This issue is discussed in greater detail under 1C): Link to Community Resources.

²⁹ Canadian Mental Health Association

In summary, respondents disagreed as to whether the court balances an appropriate response to the crime against addressing the individual's underlying disorder. As noted, the court rarely utilizes diversion when dealing with offences that warrant serious or mandatory sentences, and is further constrained by an insufficient breadth of necessary resources. Rather, the court relies on traditional responses to crime, including the use of probation orders. As a result, the majority of respondents described the court as being overly punitive and, therefore, fails to adequately address individuals' disorders and associated needs. Others argued that the court modifies traditional responses in ways that do address participants' needs and, through this alternate approach, does effectively satisfy the requisite balance.

Indicator 1B: Consideration of Mitigating Factors.

Respondents acknowledged that, when possible, the court seeks to address various "spinoffs of the mental illness issue" (John). These include difficulties common to PMI that can potentially encumber progress toward successful rehabilitation and reintegration, including: the participant's level of comprehension, and specific factors surrounding the offence. Respondents further highlighted the need to address participant's housing and substance abuse concerns. However, despite these acknowledgments, respondents suggested that a lack of adequate resources prevent the court from effectively addressing these concerns.

First, respondents consistently identified the court's consideration of the participant's level of comprehension. In particular, Roger described MHC participants as "people that often require a great deal of assistance. Their perceptions are different. Their method of thinking is often different. The way they conceptualize is different." Jane

further described these varying levels of comprehension and how they affect participants' understanding of the court and sentencing procedures:

We have individuals with developmental delays who have the mindset and the thinking and maturity of a 5 year old even though they're in an adult body... There's some people that – like someone with dementia – they are not going to understand any of the philosophy behind sentences. It's pointless. Someone who has a developmental delay, a pretty severe one, is not going to understand that at all. And if they do understand it, it could be very fleeting.

As such, consideration of such limitations allows the court to determine an appropriate method of interaction with the accused. For example, the researcher noted numerous occasions where lawyers instructed accused persons to meet in the hall for further clarification regarding their sentence. Claire describes this process, whereby:

Often, they won't understand. They'll agree to all these things... the judge will say the "do you understand" thing and they'll say yes because they're terrified; they want to get out of there. But they don't. And so to review those with them afterwards and follow up with them is important, and something I try to implement.

Multiple occasions were observed where the judge ensured the understanding of probation requirements by directly consulting the accused upon reading each term. In particular, judges would routinely pause after reading each term of probation to ask participants if they understand and agree. When participants did not understand clauses, the judge would attempt to explain them in simpler terms.

Second, respondents identified that the MHC considers the situations surrounding the offence. In particular, the court seeks to identify and address "the issues of why [the accused] offended" (Jane). As such, the Crown Attorney initiates each hearing by outlining the details surrounding the particular offence. This information often includes

specific details regarding the circumstances that led to the crime, which in some cases, bears weight on the judge's decision.

For example, one observation involved an accused individual entering court on battery and assault charges. She had been incarcerated for a week, and was handcuffed and detained in the prisoner's box. Her lawyer informed the judge of the individual's numerous mental illnesses, as well as the circumstance surrounding the crime. Particularly noteworthy was that, prior to the offense, the accused individual's boyfriend attempted suicide. The judge acknowledged this event as a likely trigger for the crimes that followed, suggesting they would likely have not occurred if not for the devastation brought on by the suicide attempt. The judge informed the accused of her immediate release and subsequently suspended her sentence.

Another observation involved the accused appearing before the court on charges of vandalism and property damage. The defence lawyer suggested that the accused, diagnosed with bipolar disorder, was triggered by two major events, including a recent divorce and the failure of his business. In particular, these events had caused considerable stress, which subsequently triggered a manic episode during which he committed the crimes. The accused was granted a conditional discharge with probation terms to seek mental health support and an agreed term in which he would take medication. The judge suggested that this sentence was not to punish the individual, but rather, to help him better handle and cope with his mental illness, stating: "Probation means to talk to someone, you seem to be isolated. I don't see this as a punishment, I see it as a means of support." In this sense, without this consideration, individuals might otherwise be reprimanded for behaviors that were beyond their control.

Third, respondents acknowledged homelessness as a pressing issue among MHC participants. For example: “Often people with mental health concerns also have significant housing issues because it’s difficult to house people that are potentially disruptive or acting out” (Larry). Respondents identified additional reasons why homelessness is prevalent among PMI, including constant rejections by landlords and their inability to afford and consistently pay rent. For example, “I think also that people with mental illness sometimes have a hard time following through on day to day tasks like securing housing, paying rent, you know. Those things make it more difficult” (Larry).

In recognizing both the prevalence and significance of this issue, respondents indicated that, when possible, individuals who serve as court supports seek to connect participants with various housing organizations. Further, a number of respondents suggest that these various supports assist participants in completing social housing applications, and accessing services that provide temporary beds to individuals in crisis. This is particularly significant, as the literature indicates that living conditions can impact clinical progress in addressing mental and psychological conditions. However, it is noteworthy that this assistance is significantly limited by the lack of available community resource, an impediment that is further described in the following section.

Fourth, respondents acknowledged issues of substance abuse or addiction as exacerbating the disorder and undermining rehabilitation efforts. Moreover, most acknowledged that concurrent disorders are prevalent in the MHC. For example Jane stated: “There are a few where, it’s mostly a concurrent issue where the drugs seem to be a little more paramount of an issue, or a cause, or a precipitating factor rather than the

actual mental health issues, not denying that there aren't any... but, it's not the reason they're offending and they've kind of exhausted our judges." When possible, individuals suffering from concurrent disorders are often assigned to work with a dual-diagnostic representative, who further aligns the individual with treatment specific to their needs. However, these resources are also limited, which affects the court's ability to address these issues. Again, this is further discussed in the following section.

In conclusion, respondents confirmed that that MHC considers a number of mitigating factors that may impede on participants' successful rehabilitation and reintegration. In particular, the courts seek to address the participant's level of comprehension, as well as situational factors that might have caused or contributed to the crime. Respondents also identified the need to address housing and substance abuse issues, however, suggested that the court's ability to address these factors is compromised by inadequate resources.

Indicator 1C: Link to Community Resources.

The literature credited successful rehabilitation and reintegration outcomes to participants' involvement with community resources designed to address underlying disorders and associated conditions. However, as previously acknowledged, respondents consistently highlighted a significant shortage in the breadth and capacity of these critical resources. As a consequence, the court is constrained in its ability to facilitate rehabilitation and reintegration and to use the diversion option.

Respondents typically discussed these limitations in general terms. For example, Jeff suggested the court could have a more profound effect on individuals' with an increase in general services and supports:

[The MHC] does work but there's a lot more you could do. Part of that is resources too – what we've got access to, which isn't much. Not a whole hell of resources around here... and making things fly. And this is a Mental Health Court – it's unfunded. We didn't get mega bucks from the province or anything from anybody when we set this in motion. We just put it there and everybody does it and it works. It's not – it'd be nice if they had access to more therapeutic resources, and better – as time goes on – what we want to do is expand the social services and support agencies that are attached to the court directly.

John further highlighted the need for more resources:

There's so many people out there that have these issues. And we can't accommodate every one of them, but we could probably have 10 mental health courts in this city. But you can't do that... So what isn't working is – I don't think we are addressing everyone we can because it just isn't possible... the resources are so limited. It's an impossible task.

In each example, respondents zero in on the lack of resources as a major impediment to the court's ability to address participants' underlying disorders and needs.

In addition, several respondents described specific resource limitations. Most prominently, they identified significant shortages in resources to address housing needs. For example, Claire acknowledged that “[housing] is a tough one in this region as it is... there are significant waitlists for housing programs.” In addition, Jane highlighted shortages with respect to shelters and accommodations specifically for PMI:

Probably the biggest limitation we have at this point in time is a limit of suitable crisis beds that will accept individuals who are just out of custody. And the crisis beds we do have are for a very, very, very, very short time. So you can get nothing accomplished.

Moreover, respondents acknowledged that there is “absolutely minimal, if not zero, support – minimal is probably more fair – for people with concurrent issues. And there's definitely nothing – no formal treatment in this area – for concurrent issues” (Jane).

These inadequacies are significant, since homelessness and concurrent addictions are profound impediments to clinical progress in addressing mental and psychological

conditions (MacDonald et al., 2014). Equally important, they are recognized predictors of further criminal activity and, therefore, recidivism.

Further, respondents acknowledged that resource inadequacies prevent the court from considering certain dispositions that would benefit accused persons, including, as discussed, the use of diversion. Accordingly, they introduce a dilemma, wherein: “If I don’t have the resources, I can’t do diversion” (Jane). As a result, the MHC under study is structurally impeded from considering diversion to the extent described by the literature. Instead, it must rely on alternate dispositions which, in many circumstances, will inadequately address the underlying needs of participants.

In summary, respondents acknowledged the critical relationship between the MHC and an array of community resources and services. However, deficiencies in the breadth and capacity of these resources compromises the court’s ability to address the legitimate needs of participants. Moreover, this limitation prevents the court from embracing diversion as an option, and thereby creating a major structural difference with MHCs described in the literature. Together, these conditions undermine the court’s ability to address participants’ underlying disorders and associated needs and, in so doing, increase the likelihood of re-involvement in the criminal justice system.

Indicator 1D: Monitored Compliance.

The literature indicates that MHCs closely monitor the accused to increase compliance, track progress, and respond to emerging concerns. As mentioned, however, it also assumes that MHCs favour diversion as the primary disposition. In this regard, the literature describes monitored compliance as a component of diversion, and does not contemplate other dispositions, as utilized by the MHC under study.

On those occasions when the diversion option is used, respondents confirmed that the court does monitor compliance. For example:

Well, basically what happens is the diversion generally is for 6 months. If [we] are unsure, and it's mostly me because I meet with them prior to starting diversion, if I'm not sure that they're going to engage or we might have some problems, we will have them come in after three months and just do a check in to see how things are going (Jane).

However, because the court more frequently dispenses alternative dispositions, respondents suggested that it is difficult to monitor progress in the court. In this regard, respondents identified two innovative ways in which the court has been able to monitor compliance and the progress of participants.

First, the court often grants a series of adjournments that allow accused persons to improve their circumstances prior to sentencing. At each appearance, their lawyers inform the judge of the participant's current situation, including what he or she is undertaking, and whether additional time is required for the individual to better situate himself or herself for sentencing. The judge either grants additional adjournments or sets a final date for sentencing. This process allows the court to monitor participants' progress over a limited period, and uses the possibility of a less severe sentence as incentive to engage in treatment or other support, and to stabilize their lives in other ways.

Moreover, respondents identified that when participants are thought to need monitoring, the court will often adopt probation with conditions, as the disposition. In such circumstances, probation officers monitor participants, who are required to follow terms and conditions set by the court. Renee described this process, stating:

So after there's a court order, I don't have any involvement in whether they follow it or not. I only hear about it if they don't, and somebody decides to charge them with not following it. So a probation officer will lay a charge for not complying with their probation order if they think somebody is not

taking their meds... or they're not going to the right counselling... or that sort of thing. Then that results in a new charge that brings them back into the court with a charge of not following the court order.

John further described this as a “no news is good news” process, where “if you don’t see them, then that’s good news”. Additionally, judges may include a specific term during which individuals are required to report to the court for “check ins”. For example, John stated:

But sometimes, I’ll put in a probation order that they come back and see me as a term of their probation. So I sort of ... I usually pick a two month period – or if it’s a 12 month probation that they come back and see me and I pick a date and when they come back; I just see how they’re doing.

In summary, the monitoring process of the MHC under study departs significantly from those MHCs examined in prior research due to its limited use of diversion.

Although it follows that the court is unable to monitor participants as the literature describes, respondents identified that the court does introduce monitoring through the use of frequent adjournments, and as conditions set within probation orders.

Principle 2: Therapeutic Rules and Procedures

The second principle of therapeutic jurisprudence promotes therapeutic rules and procedures over ones that may be considered anti-therapeutic. Participants were asked five questions regarding how the court incorporates therapeutic rules and procedures, and avoids those considered anti-therapeutic. Overlapping with the MHC Model, respondents discussed: voluntary participation; teamwork; relaxed courtroom rules; including the accused in the MHC process; including the accused individual’s family in the MHC process; and assistance throughout the MHC process. Analysis of the data also produced the emergent code “consistency and continuity”.

Indicator 2A: Voluntary Participation.

In line with prior research, all of the respondents described participation in the MHC as voluntary. Individuals are first required to meet the criteria for participation in the MHC³⁰, and are subsequently notified of their eligibility through their lawyer, or the MHC coordinator. Upon qualifying, the decision to participate is ultimately at the discretion of the accused. For example, “Coming into Mental Health Court, for the most part, if the person is able to agree, is voluntary. People don’t have to come into Mental Health Court if they don’t want to” (Jane).

The voluntary aspect further extends beyond the initial acceptance to participate in the court. In particular, respondents noted that some participant’s perceive MHC as an “easy way out” or a “get out of jail free pass”. However, upon enrollment, participants often find it difficult to engage in treatments and address certain personal issues. As such, at any point in the court process, individuals are able to withdraw and return to traditional adjudication. For example, John noted:

[The MHC is] not gonna work unless the person is involved. So it has to be with the cooperation of the accused. And if they’re not going to cooperate and they’re not interested, then, we have people that come in that don’t want to once they get in there... so they go back into the regular stream.

Respondents further suggested that failure to demonstrate personal motivation may disqualify individuals from participating in the MHC.

Explanations for the court’s voluntary nature further corresponded with the literature. Foremost, respondents identified that the court is legally prohibited from coercing individuals into treatment or to take their medication. For example, several

³⁰ The court coordinator identifies potential participants for the MHC. Recommendations are reviewed by the Crown attorney, who ultimately decides whether participants are eligible. Jane explained that there is no formal criteria for participation, however, “there has to be a nexus between your mental health issue and the offence that you’ve committed.”

respondents made clear that the MHC cannot sentence a PMI with conditions that require participation in mediation, nor can they or impose taking prescription medications as prescribed. In addition to these legal restrictions, respondents identified that successful rehabilitation and reintegration requires the participant's willingness to address their issues. As Renee explained:

That person has to want to be there. I mean, we can identify the need, but if the person chooses not to take part in the specialized court, then we can't make them. So, bearing that in mind, there's an onus on that person to actually work with the supports that are being offered (Renee).

That being said, respondents noted that individuals are often reluctant to participate in the MHC. In particular, the data suggests that many of these individuals experience anxiety about the court, with particular fears that involvement will lead to institutionalization. As such, potential participants often require encouragement and assurance from legal actors. For example,

In a lot of cases, it's an effort in talking to them to convince them to participate, because a lot of times they don't want to. Or they don't understand it. A lot of times they're afraid. Unlike other people in the criminal justice system, they have by far the most to lose. And they stand – I mean, they could – many of them are literally locked up in hospitals for life, or years on minor offences. Or they are repeatedly incarcerated, in and out, in and out, in and out, week after week after week, for months, sometimes for years. And so they're afraid. And sometimes there's a need to work with them to try and show them the benefits to them of doing programs – of being assisted, so they understand that, at the end of the day, this isn't just some jive talk, whitewash to lock them up somewhere. Because that's what they're afraid of (John).

In particular, respondents described recruitment into the MHC as a “push and pull” process, whereby many individuals require prompting due to their inability to recognize their need for assistance. For example,

Sometimes you'll have people saying “there's nothing wrong with me,” right? Or, there will be a lot of reluctance to even acknowledge that there's

a mental health issue. And maybe this is the first time, for instance, it might be the first time that they've become involved in a criminal activity because maybe their schizophrenia is just coming out, for instance. We see that a lot... early 20s kind of thing.... Not previously diagnosed... so a manic episode or something. So that's one reason why it takes a long time, sometimes. Because people have to be talked into being part of the process so they can be helped. So, I don't think its as easy as just saying yes, cause I don't think that they – because of their mental illness – they don't always recognize (Renee).

Recognizing this impediment, actors can work with PMI to understand the benefit of the court and take advantage of opportunities to receive assistance. However, the decision to participate remains at the discretion of the accused.

In conclusion, subject to occasional prompting and encouragement, respondents ultimately confirmed that participation in the MHC is voluntary, and is at the discretion of the accused. Consistent with prior research, respondents' reasoning for this voluntary participation is that the court is legally prohibited from requiring individuals to engage in treatment or impose taking medications. Moreover, respondents recognized that participants' success in the MHC rests on their personal desire and willingness to address their issues and engage in treatment.

Indicator 2B: Teamwork.

The literature describes teamwork as a central component of the MHC. However, respondents generally disagreed as to whether such collaboration is achieved. The first group of respondents confirmed the notion of teamwork, suggesting that stakeholders collaborate to craft informed, best-fitting responses for each participant. For example, Greg suggested, “the Mental Health Court can be good for bringing people together... in Mental Health Court, we can sort of get everyone together and put together some sort of plan for a person.” In particular, respondents suggested that this collaboration includes

the various individuals associated with the accused. Sam described these individuals, whereby:

You've gotta have the Crown in there, you've gotta have the Mental Health Court worker in there, you have the defense counsel... if you have no defense counsel, there's a duty counsel in there. More or less, if the person is determined to have a mental illness, the counsel and the Crown will talk about it with the worker of the region. They're the ones who will determine the person's situation and what's gonna happen to the person... and also with the judge, too.

Consistent with the literature, these respondents acknowledged that such collaboration is possible as the various stakeholders share a common goal to assist PMI and provide each participant with a best-fitting response to their situation. In particular, respondents described the court as a teamwork approach, where positions (e.g., understandings of circumstances or “statements of fact” presented to the judge), often overlap. For example, “a lot of the positions in Mental Health Court are joint positions, so counsel agree” (John). Moreover, respondents suggested that this collaborative approach is particularly significant, as it differentiates the MHC from traditional criminal courts. For example,

All of those groups and people working together is pretty unique because it's more of a team approach while still maintaining the traditional roles. But, you know, there are 2-3 counsel who work in that court quite often, and we will have sort of informal meetings or discussions leading up to court so that we sort of are working towards the same goal... still maintaining our – I mean there are still things that we differ on, by the nature of, you know, what we are doing – but there's a lot, I think there's a lot more communication and common ground going into the court (Renee).

Conversely, a number of respondents disagreed with these notions of teamwork in the MHC, suggesting that legal actors rarely agree about what is best for the accused. Rather, they identified the court as an adversarial system, where legal actors have vested

interests that often conflict. For example, when asked to describe the court's dynamic, Larry suggested,

It's still an adversarial system. The Crown's role is different than the defence lawyer's role, and the judge has a role altogether different than those two. So, it's an adversarial system. It's more collaborative in a sense that people try to direct a case in a way that they think is favorable to the stakeholders as best they can. But at the end of the day there are occasions where it's not collaborative, it's adversarial (Larry).

Jane further described the court as adversarial, stressing the need for support workers to remain impartial, and refrain from siding with either the defence or the Crown attorney.

Further to this, some respondents stated that dispositions, which are ultimately determined by one or two individuals in power, often fail to incorporate the considerations of other legal actors such as court supports and the defence lawyers. For example, Jane described communication between actors as: "Consult slash tell... there is a lot of directive collaboration, if you want to put it that way...". This implies that dispositions are not decided by consensus or even a vote, but are ultimately at the discretion of one or two individuals.

As such, respondents generally disagreed as to whether teamwork is, or the extent to which it is, a component of the MHC. A number of respondents suggested MHC actors work together to achieve a common goal to develop and implement a best-fitting response to their situation. These responses reflected the literature, which describes teamwork as a central component to the MHC. In contrast, other respondents described the court as an adversarial system whereby actors maintain vested interests, and rarely agree about what is best for the accused.

Indicator 2C: Relaxed Courtroom Rules.

All respondents identified that PMI generally struggle to follow the rules and procedures of traditional criminal courts. According to Roger, “[PMI] simply have difficulty with the type of structure and formality and rule adherence that the rest of us hopefully get... I think that we therefore try to be a little less structured than you might otherwise see”. In particular, participants listed a number of examples as to how the court accommodates PMI with special procedures, and forgives instances that would otherwise warrant reprimand, including: court etiquette, talking out of turn, non-compliance and failure to attend.

Foremost, respondents described the MHC as relaxed with respect to formal and proper court etiquette. Specifically, participants are generally excused when they fail to address the judge as “your Honour”. Roger describes a related incident, stating: “I mean, I’ve had people call me your holiness in Mental Health Court... never mind your Honour, but your Holiness.” Participants are also granted leniency with respect to bowing upon entering and exiting the court, a transgression often cited by respondents. At the opposite extreme, there were reported instances where participants performed exaggerated bows, such as getting on their knees before the court. Moreover, “people aren’t disciplined for perhaps not standing straight or not looking the judge in the eye or having your hands in your pocket, those sort of things” (Larry).

Respondents are also granted greater flexibility with respect to appearance and attire. John acknowledged this leniency, stating: “I’m never critical of people and what they wear because that might be all they have. So you have to be careful of that.” In contrast to the business-casual attire that was observed in the courthouse hallways, the

researcher consistently observed MHC participants in clothing that might otherwise be deemed inappropriate. For example, the researcher observed a young female enter the court in a mini-dress, and stilettos with metal spikes. The researcher also noted many instances of baggy sweatshirts and jeans worn in the courtroom; tank tops; displayed tattoos; bra straps; pants falling down because they were too large; and cold-weather jackets on hot summer days.

Further, the data suggested that the court is generally more lenient with respect to talking out of turn and outbursts in the courtroom. For example,

Judges in Mental Health Court try to maintain the dignity of the court but also are less likely to be reactive to people confronting them... I think people are a little more forgiving if people speak out of turn or show anger or upset or storm out the court and aren't looked at as, I suppose, showing contempt for the court – as might ordinarily be the case in regular court (Larry).

The researcher observed a number of instances where participants interrupted the interaction between the judge and the lawyers. In one particular instance, the researcher observed an audio call³¹ from a client who was currently serving time in a psychiatric facility. The Judge spoke directly with the accused to explain that she would be granted an off-grounds pass for one day each week. However, the judge was consistently interrupted by the accused, who argued that she was well enough to receive an additional day of off-grounds privileges. Instead of disciplining the individual, the judge allowed her to express her concerns on numerous occasions, which was consistently followed by calm and slow explanations as to why her request could not be granted at that time.

³¹ Individuals residing in psychiatric facilities can be connected with the court through audio calls. These calls are presented through the court's speaker system, allowing each of the courtroom actors to interact with the accused.

In another instance, the accused individual interrupted a conversation between the lawyers and the judge, stating “Can I just say something?” In an exasperated manner, the accused proceeded to describe how she had spent her life in psychiatric facilities and was “tired of it”. She further informed the court that she is “not a little girl anymore”, and wants “the opportunity to live the rest of [her] life” outside of the psychiatric facility. The judge and the lawyers sat quietly and attentively, allowing the individual to express her point of view over the course of approximately one minute. Rather than punish the individual for interrupting the court proceedings, the judge calmly acknowledged the individual’s concerns, and then delivered a hastened discharge as to prevent further agitation.

Finally, while respondents acknowledged the need to discipline consistent failures to comply, they simultaneously expressed understanding that individuals are likely to relapse. For example, John explained: “We’re not always successful, and you know. Every time I go in there and I see someone like... what happened.... ‘Well, I was feeling pretty good and so I didn’t take my medication...’” As such, respondents acknowledged that the court recognizes a greater likelihood of recidivism, and is more lenient in granting additional opportunities for eventual success. For example, Larry explained: “I think everyone tries a little harder to give people additional opportunities not to be arrested.”

In spite of these relaxed procedural aspects of the court, some respondents noted that, for the most part, the court still maintains the rules and regulations of a traditional criminal court. For example, Jeff explained: “You have to maintain some formalities so they know the serious nature of what’s going on here.” Some individuals felt that the

courts modifications and accommodations were too modest to overcome the otherwise structured rules and procedures of the MHC. For example:

It's still that very structured, very traditional court. You still have the Crown against the defense. I think it's intimidating and scary for individuals. I think the structured environment is difficult for individuals who have anxiety disorders or psychotic disorders (Claire).

To illustrate, an aspect of the court that was noted as particularly anti-therapeutic is the in-court detainment, whereby the accused is handcuffed and confined the prisoner's box. Claire acknowledged this, stating: "You know, coming in with mental health issues being cuffed and being thrown into this tiny little box can be tough – it can instigate psychosis for individuals who are struggling with that." Further, Jeff identified that "the handcuff thing is always problematic too. A lot of them don't need it. A lot of them are reactive to being handcuffed."

For example, the researcher observed a detained individual who became restless and disoriented, and repeatedly pleaded for release from the prisoner's box. After being consistently ignored, the participant began to cry uncontrollably. Recognizing that this reaction was triggered by her detainment, the judge granted the participant's release and relocation to the lawyer's bench with her attorney, at which point she regained composure.

In sum, respondents generally disagreed about the extent to which the MHC relaxes certain rules and procedures of the courtroom. Consistent with the literature, a number of respondents felt the court accommodates PMI, and is more forgiving in instances that would otherwise warrant reprimand. In particular, respondents suggested that the court is more relaxed with respect to: etiquette and attire, speaking out of turn,

and discipline. Conversely, other respondents felt that these accommodations did not adequately compensate for the structured rules and procedures of the MHC.

Indicator 2D: Including the Individual.

Consistent with the literature, most respondents felt that the accused individual's input is, to varying degrees, incorporated throughout the decision making process. In particular, respondents identified that the court considers the participant's wants, needs, and goals, as well as input as to how these could be best achieved. Respondents discussed the reasoning behind this inclusion, suggesting that individuals are more likely to invest in personally established goals:

I guess the notion is, if you can incorporate what somebody wants, then they're more likely to comply. Right? So if you can fashion a sentence or a program or a diversion scheme that engages the accused to do things they want to do – that they accept is in their best interest- you're far more likely to be successful (Larry).

Jane further elaborated, stating: “even in the diversion plans, the person is always involved. It's gotta be their goals. If it's not their goals, then they're not going to be invested in it.”

Participant input can be obtained through various means, including the accused individual's lawyer, as well as the court coordinator. Input can also be obtained through direct interaction between the accused and the judge. For example: “In this court, there's a view that the judiciary engaging with the accused is a good thing, and I agree. Where in traditional court, you're always talking through your lawyer... the judge really can't/isn't supposed to talk to the person” (Greg). Roger further explained this method of obtaining input, stating: “To the extent that I am able to – to the extent that I am legally able to – I will give consideration to the needs and specific wants of the accused, absolutely.”

However, drawing attention to an apparent absence in the literature, respondents highlighted the critical need to establish boundaries when allowing participants to express their input. In particular, Claire acknowledged that granting participants with open platforms for expression can be “opening up a Pandora’s box”. This is to suggest that, in some circumstances, greater interaction can have negative implications. In particular, individuals may reveal information that can be potentially detrimental to their case. In addition, tangents may lead to topics that evoke negative responses. For example,

There are times, we had a bail hearing about a month and a half ago, that the justice of the peace... I could see it, cause I wasn’t even in the courtroom... I could see it through the doors... just letting the person explode. There was no reason for that. No reason for that. But just kind of feeding into some of their delusions. And, sometimes, they’re not listened to for what they’re saying and that can cause them to escalate. But there was no reason for that. I spoke to this person and he was perfectly calm, and then when he went before the justice of the peace and was allowed to say his bit and talk about how he’s being persecuted by the police an all those things, obviously he escalated. He had a forum to do it. And he did and he did and he did until the justice of the peace said, “okay, I’m gonna send you to the hospital.” So how did he go from being perfectly calm, from having to go to the hospital within an hour? I don’t find that therapeutic. But that’s, you know, also experience. And some people think that they’re being helpful by letting people vent all of their delusions and that, and they’re not (Jane).

Renee further confirmed the need for boundaries, as “[participants’] needs and wishes might not be therapeutic from our point of view at any given moment”.

Although these responses corresponded with the literature in that participant input is generally welcomed and participants are more likely to fulfill personally established goals, prior research failed to acknowledge a need for boundaries in such interaction. This is particularly significant, as inclusion without boundaries can have negative implications, whereby participants can further incriminate themselves, or require intervention.

Indicator 2F: Inclusion of the Accused Individual's Family.

Respondents disagreed about the degree and frequency to which family are involved in the MHC process. In particular, a number of respondents suggested that family is highly involved. For example, when asked if family is included throughout the MHC process, Leslie responded: "Oh absolutely. Family is invited to speak. If they're not invited to speak, they can raise their hands and they're gracefully invited to share their information with the judge... Very much incorporated." This was further confirmed by Larry, who suggested: "I think family members, perhaps, are spoken to more in Mental Health Court than they are in ordinary court because, often times in Mental Health Court, family members appear more often with accused people."

Respondents identified various ways families are included throughout the court process. Foremost, they suggested that the court seeks to involve the accused individual's family immediately upon arrest, as their knowledge is required to proceed in an informed manner. In particular,

Right from the get go, the police are to involve the family immediately, because the families are the greatest source of information. The more information you have about the individual, the easier it is to assess whether they should be in the court. So families are involved. A lot of these people don't have families, but... Right from the get go, the police will try to find out as much about the family history as possible, because they want to resource the families. A guy is picked up on the street and he's homeless but he's got a mom and dad that live down the street... he just never goes there. But you go there and you find out his psychiatric history: "Oh yeah, he was in [the hospital], he was in [city name], his doctor is so and so, he's been diagnosed with this and that." So the families are involved as a source of information, throughout (John).

Specifically, families serve as a source of information with respect to the accused individual's psychiatric history.

Family often knows more about that person in terms of their mental health struggles than [the court]... sometimes people with an active mental illness aren't the best historians of their circumstances either, so sometimes you need to speak to the family member to find out a little bit about the person that they aren't able to or unwilling to share with you (Larry).

Respondents also identified that, when appropriate, the court obtains family input with respect to the accused individual's disposition. This input includes questions, concerns, or requests made by the family that are considered when crafting an appropriate disposition. Further, respondents suggested participants' underlying mental health concerns can often impact the family in negative ways. As such, obtaining their input is a way to recognize these hardships, and hear considerations by those most affected. Roger described this inclusion, stating:

I'll engage family all the time in Mental Health Court, which I would not normally do unless it was a young person ... I will often give the family an opportunity to speak in MHC and ask if they have concerns or questions - what can we do to help them... that sort of thing.

Conversely, some respondents felt that families are less frequently involved with the MHC. Rather, "sometimes they're expressly and exclusively ignored or shut out for a variety of reasons" (Jeff). Respondents offered various explanations as to why family input might be excluded from the MHC. Foremost, families are often victims of the offence making input more difficult. For example, when asked about the infrequency of family involvement, Renee responded: "Sometimes you can't because the family are the complainants, so that makes it more difficult too." Second, Jeff acknowledged that there is often tension between the accused and their family, whereby:

The accused doesn't want them involved because their goals are diametrically opposed – the accused wants to be out and the family wants them hospitalized... families resign, and hope that the system will somehow take care of their relative without the necessity of them becoming involved.

Of further note, some respondents suggested that family involvement can have anti-therapeutic repercussions. In particular, they noted that families often have idealistic hopes as to what can be achieved by the MHC. According to Jane it's generally "family members who are really desperate... who walk into our court thinking that we are gonna force them into treatment, which we can't do, and they come in with some misconceptions." In such situations, MHCs may seek to intentionally exclude families as to avoid disappointment and frustration, and to prevent interference with the recovery process by establishing unrealistic expectations.

Third, respondents identified that families are generally absent and beyond contact, often resulting from a history of long, tiring struggles with the accused. Leslie described this absence, whereby "a lot of clients don't have family, next of kin, contact people... often when I do an intake, I don't have [a name for] who I call in an emergency... I have no one is the answer I get". Further, in line with these statements, the researcher witnessed only two occasions when the court obtained family input. In these circumstances, the judge sought to inquire about the current living situation, and asked for clarification regarding a no-contact order. That being said, these observations did not account for family involvement that occurred outside of the courtroom setting.

In conclusion, respondents generally disagreed about the extent to which the accused individuals' families are incorporated throughout the MHC process. A number of respondents suggested families are heavily involved in relation to providing the medical history of the accused, as well as to provide their input regarding the dispositions. Conversely, others suggested that, as a rule, families are rarely incorporated throughout the process.

Indicator 2G: Assistance Throughout MHC Process.

MHCs are described in past research as complex and daunting for PMI. In this regard, the literature indicated that participants require a great deal of assistance to navigate the criminal justice process, typically through the form of court coordinators, support coordinators, or community-based case managers (Schneider, Bloom & Hereema, 2007; Wolff, 2002). This study finds similar results, as respondents identified the critical roles of the court coordinator, support coordinators, and a psychiatric outreach nurse in assisting PMI throughout the court process.

In particular, respondents indicated that coordinators hold a number of responsibilities that are critical to the participant's ability to successfully comply with court orders. Foremost, the court coordinator visits potential candidates to determine eligibility in the MHC, and further facilitates a plan to best address the individual's need and concerns. If the individual poses harm to themselves or others, the coordinator may choose the forensic route or suggest immediate hospitalization. If the accused individual is without a lawyer, the court coordinator will connect them with representation. Jane described this process as "a triage", whereby:

If somebody is really unwell, for whatever reason, whether drug induced psychosis or a mental health psychosis, then I will go downstairs into the cell area and speak with them and try to ascertain what's going on. I'm not going to diagnose them, even if I probably know what's going on. I'm not there to diagnose, I'm there to try and facilitate the next step. So if that means going to counsel, or getting counsel for the person if they need to go the forensic route, then I make that recommendation. If I think they need to go just to (*location removed*) Hospital just because there could be an immediate danger to themselves or others, or they aren't able to take care of themselves if they are released, then that's what I'll do. So there's the triage piece.

From here, coordinators determine whether any current supports are in place. For individuals who lack previously established supports, the coordinator establishes links with resources specific to their needs. Jane further described this function, stating:

I help screen files to see who can come into Mental Health Court and who can't, and then I will facilitate the supports that might need to be in place, and I will be the person who talks to the supports in the community if they are already existing to see what's going on and how we can move forward. So that if they're gonna be in mental health court, you know, let's make it worth everybody's while, and if something needs to be addressed, let's address it. Sometimes if they're in a group home and they're just not following the rules or the staff thinks they could be doing something... sometimes just being in court and having that little thing over their head... sometimes that allows people to move into the next step. It's not the nicest thing, it's probably not conducive to therapeutic as well, and sometimes it just helps people move forward.

In addition, support coordinators assist PMI throughout the court process with a “hands on approach” by interacting with individuals before and after court to ensure they understand the court's requirements. The support coordinator also attends court with the accused to provide both guidance and support. Claire further described this function, stating:

So for me, it's really important – I try my best to sit with them during court. I don't just sort of stick them off in the corner somewhere. Again, it's a little bit inevitable if I have four people being seen, obviously I can't sit with all four. Just to kind of – I make sure I meet with them prior to and after court, to prepare them and debrief with them after what's happened.

Moreover, respondents identified the critical assistance of a particular psychiatric outreach nurse. In addition to providing and aligning the accused with supports, the psychiatric nurse was described as playing a critical role in providing assistance throughout the court process and, in particular, upon release from custody. Leslie described this assistance, stating:

For anyone who may be released from custody and may need support – I have taken people to the soup kitchen following custody if they are not familiar with it. Or if they needed to go to the bank following release. If they don't know how to get through probation, I can help them get through that.

In summary, respondents identified the court coordinator, support coordinators, and a psychiatric outreach nurse as critical in assisting PMI throughout the court process.

Respondents consistently indicated that these various types of assistance are highly valued by members of the MHC. In particular, each was recognized as a link that bridges the gap in communication and understanding between the court system and PMI, as well as providing a sense of comfort throughout the often-overwhelming court process.

Emergent Code 2H: Consistency and Continuity.

Respondents identified the therapeutic benefit of consistency and continuity in the courtroom. In addition to frequent adjournments, the court generally rotates among four designated MHC judges, as well as various individuals who serve as duty counsel. As a result, participants can make multiple appearances before various legal actors.

Respondents noted that constant rotation of this nature can be overwhelming in an already complex court system, whereby “one day they are working with Tim that’s duty counsel, and then Sally that’s duty counsel, and then it’s Billy that’s the duty counsel.

And they sort of feel tossed around” (Claire).

As such, respondents acknowledged the therapeutic value of increased consistency and continuity in the court. In particular, respondents noted the court’s attempt to create a sense of consistency in spite of a rotating staff. For example, as observed on a number of occasions, judges requested specific matters to be rescheduled to a date when they were sitting in court. For example:

Sometimes I'll see that the judges will, even after they've sentenced someone, they'll say, "I know I've sentenced you but I want you to come back in a month – I want to see how you're doing." That doesn't usually happen in the other courts. Also because we see the same people, some people, over and over, there's a recognition too. The judges will say, "Well I remember I was the one who put you on this probation order, and why didn't it work? Can you tell me what is not working for you here?" (Renee).

This was further observed by the researcher on a number of occasions. For example, on one occasion the judge requests that two individuals consistently appear before him in the future. In both cases, the individuals appeared frequently at the MHC, and suffered from a series of complex mental illnesses. Familiar with the intricate details surrounding each case, the judge established this consistency to preserve a measure of continuity in the recovery process.

Respondents identified that such consistency is beneficial in two respects.

Foremost, it allows the often anxious participants to appear before a familiar face, with some indication of what to expect. Renee argues that appearing before the same judge provides for "continuity in the approach, continuity in the language, continuity in the expectations... that kind of thing". Second, it ensures continuity in the disposition, where the judge is fully informed of the accused individual's progress and can subsequently make informed decisions in proceeding with the next step. For example, Roger explained:

I try to set out expectations clearly, and then I try to – if they are coming back before me – I try to have a note so I can remind them, I can say "last time you were here, here's what we talked about – what have you done?" That sort of thing, just to make sure that they understand that there's some consistency/expectation that has to be met... that sort of thing.

In summary, respondents identified that consistency and continuity are critical aspects of the MHC process. Amidst a rotating staff, the court seeks to create a sense of consistency by ensuring participant's appear before the same legal actors. The presence

of a familiar face can ease participants' anxiety, providing them with some indication of what to expect further at their court dates. This further ensures continuity in the disposition, allowing the judge to proceed in an informed manner. Further, it is noteworthy that this indicator is particularly significant as it was previously unaddressed by the MHC Model, and thus serves as an original example of a procedure to enhance the positive outcome of participants.

Principle 3: Therapeutic Interactions

The final principle of therapeutic jurisprudence promotes therapeutic interactions over those that might be considered anti-therapeutic. Participants were asked five questions to determine how legal actors encourage therapeutic interactions and avoid anti-therapeutic interactions in the MHC. Overlapping with the MHC Model indicators, respondents discussed therapeutic traits, as well as verbal and non-verbal language. Analysis of the data also produced "experienced stakeholders" as an original code.

Indicator 3A: Therapeutically Enhanced Roles.

Respondents discussed a number of characteristics they adopt to enhance therapeutic interactions with PMI. Consistent with the literature, respondents discussed their attempts to convey encouragement and compassion, and enhance their approachability. In addition to these, respondents identified the need for actors to practice greater patience when working with PMI.

First, a number of respondents acknowledged the need for greater encouragement towards PMI. In particular, they suggested that MHC actors commonly use positive reinforcement to recognize and encourage participants' progress. Greg described such interactions, whereby:

A lot of it's just good, positive reinforcement: "Hey, you came here 2 weeks ago and you're doing much better. You're here with your worker"... cause a lot of people come with some sort of worker, you know... "Your worker is saying that things are going good! That's good, that's good, keep it up, come back in a couple of weeks and tell me how well you're doing!" You don't get that in normal court (Greg).

Consistent with this account, the researcher observed legal actors encouraging PMI throughout the court process. In particular, judges consistently praised participants' successes, stating "well done", and "keep up the good work". For example, on one occasion, the researcher observed the presiding judge read a letter from the participant's treatment program outlining their progress. The judge commended this progress, stating both "well done" and "you have done very well" to the participant. Another example of this was observed when the judge praised the accused individual's initiative, stating: "You did a good thing moving away from [city name] and crystal meth. You're doing well, and I want you to continue doing well." Additionally, the researcher consistently observed judges wishing participants "good luck" upon exiting the court, which further encouraged their success.

Respondents further discussed the importance of encouragement in the MHC, suggesting participants are more likely to comply and follow through with court orders when they are encouraged and motivated. Significantly, this explanation corresponds with the literature, which identified encouragement as an effective strategy to spark motivation, thereby increasing compliance. Respondents further proposed that praise for accomplishments can instill a sense of achievement which, in turn, motivates participants to succeed.

Second, respondents expressed the need to increase their approachability in the MHC. In particular, they acknowledged that PMI generally experience heightened

anxiety and intimidation in the court system. In an attempt to alleviate these adversities, a number of respondents described their efforts to appear kinder, warmer, and more approachable. For example, Roger suggested that MHC judges adopt an approachable attitude in the MHC as to diminish participant's fears and intimidations:

Most judges, I think, when they're in the mental health court, are... have an attitude of being a little more approachable, more affable. From my perspective, I try not to be – to appear intimidating unless it's necessary. I try to be affable and I try to appear concerned – I am concerned. And I try to be approachable. I try to be human. I try to be more of a person than a figure... than an official. I try to engage them personally in conversation. I try to be interested in their circumstances – what they're doing, how they feel, what they think they need. I try to be encouraging.

In this sense, Roger suggests that actors can increase their approachability by diminishing their role as legal figures, and engage participants as equals.

One way that actors can achieve this is through the use of humour. For example, Greg described his use of humour as a means to make clients feel at ease and recognize him as an equal as opposed to an authority:

I swear a lot... I downplay the offence, you know? Like you get a screening for them and you're like: "Jail! What?! For a good guy like you?! Oh my God, that's ridiculous..." – that type of stuff. And they're like, "Hey, you don't talk like other lawyers!" That type of stuff. So, yeah, I ... you know, try and show that I'm not that much different from them. I know I'm wearing a suit and all that other stuff but... I don't know.

John also discussed his attempts to incorporate light humour into conversations with the accused, stating: "In Mental Health Court– you know, you get the hockey sweaters... and I try to engage and say things like 'I'm going to do this, notwithstanding that you are a Ottawa Senators fan.'"

In addition to humour, Renee described small but significant elements of interaction that encourage participants to see her as friendly and welcoming:

Sometimes I'll call people by their first names, which you're not supposed to do in court. I mean, sometimes I'll have a quiet conversation as they're approaching, just sort of "how are you doing" – just something that I would never do in a regular court. You know, that you know would be really improper for me to do. So it's really tiny things. I'm hoping that it's something that makes them feel a bit more comfortable, less stressed. I mean certainly we're always aware. I mean I know certain people who just can't wait. If they make it to court at all, that's a miracle... and so I will try to make sure those people get in and out kind of quickly, that kind of thing. I mean, just individual stuff like that that you might not take into account in a regular court.

Using the described tactics, legal actors minimize court formalities and diminish their roles as legal figures, thereby instilling a sense of ease in participants. This, in turn, creates a relaxed atmosphere in which PMI are more willing to interact.

Third, all of the respondents addressed the need to convey sympathy and compassion towards MHC participants. In particular, respondents demonstrated a common understanding that PMI are generally not in complete control of their actions, and further acknowledged a number of obstacles and hardships these individuals face due to their mental disorders. For example, Sam noted:

There is a caring aspect of it in this court. You realize that people should be treated differently... I guess the gentleness of the approach to that person... the way you talk to them. Your empathy... you want to understand that person.

Roger further expressed his attempts to convey sympathy, stating:

I try to be understanding. I often talk to them about understanding all of the mental and emotional baggage they bring with them and.... Being sympathetic in the sense that – making them understand that I appreciate that their circumstances are extremely difficult. I try to make the system in the most case less intimidating for them.

As such, respondents overwhelmingly expressed sympathy and compassion for MHC participants, and recognized the need to convey these emotions.

Respondents further discussed the significance of conveying sympathy. In particular, a number of respondents suggested that a lack of sympathy and compassion can be counterproductive to PMI. In particular, unwarranted harshness can trigger negative reactions from participants, and discourage them from actively participating in the court or seeking assistance. Moreover, some respondents suggested that expressing empathy for individual's situations is human nature, and allows them to fulfill a personal desire to demonstrate compassion. For example, when asked why sympathy is an important aspect in the MHC, Renee responded: "Partly it's for me, because, you know, we are all human right? And I just want to sort of take a moment to acknowledge that I'm thinking about the person, maybe." In this sense, Renee suggests that demonstrating compassion is a way to convey appreciation for participants' difficulties.

Last, several respondents identified a greater need for patience in the MHC. For example, Larry identified the need for a "certain type of personality" whereby, "if you're not patient, you wouldn't last." In particular, respondents described PMIs involvement with the MHC as generally lengthy, with frequent procedural delays stemming from non-compliance and recidivism. In addition, respondents suggested that interactions are often met by a number of obstacles. For example:

Oftentimes, an accused person can be hostile or standoffish or non-communicative or just difficult. So, first thing is not to escalate the situation. I've had to learn over the years not to respond sometimes when you feel like responding and just let things go because that just tends to make things worse. So I think you have to be flexible when you deal with people in Mental Health Court, I think you have to be patient, I think you have to sometimes just let people talk, even if it doesn't make a lot of sense, and even if it takes 10 times longer than it should (Larry).

In this sense, actors require a considerable amount of patience and dedication when working with PMI. In particular, they must remain calm and collected throughout these delays and obstacles as to encourage and facilitate therapeutic interactions.

In summary, respondents described their adoption of various characteristics to enhance therapeutic interactions with PMI. A number of characteristics overlapped with those identified in past research, including enhanced encouragement, approachability, sympathy, and compassion. Moreover, individuals identified the need for patience, which was previously unaddressed by the literature.

Indicator 3B: Verbal/Non-Verbal Communication.

Consistent with previous findings, respondents discussed their attempts to increase the use of therapeutically beneficial language and avoid anti-therapeutic language in the MHC. In particular, individuals overwhelmingly acknowledged attempts to avoid legal jargon when interacting with PMI, suggesting that formalized legal language can be confusing and overwhelming for PMI. For example, Roger stated:

I try to avoid legalese, and I try to speak in terms that the person can understand. Sometimes that allows me to engage them in a pretty normal way. At least in terms of the language I use. In other words, using lots of legalese and speaking in a way that clearly they can't possibly comprehend, and being just a cog in the wheel of the system. I just think that all of that is absolutely useless.

Jane further expressed the need to avoid legal jargon, stating: "Pretty much with all participants, you can't use legal jargon. Like I would not say to someone, 'look you just can't form the mens rea in order to meet...' that's not – they're not going to understand that."

In place of formalized language, respondents discussed their efforts to communicate in a language understood by PMI. In particular, respondents generally described this language as “simpler”, “more direct”, and “less colourful”. For example,

Sometimes, depending on the disability, I have to speak to them as I would speak to a young child. I have to use much simpler terms. I have to engage them on their level, if you will, and try to engage them in such a way that they can comprehend what I’m trying to get across...and sometimes, what I’ll say is to the person in MHC, that I’ll speak to them in a more simple fashion. And then I’ll say, “I have to give some reasons here and they’re gonna be a little more difficult than – don’t worry about it. What I’m essentially saying in a more formal way is what I just told you.” And I will then perhaps formalize my reasons a little bit and dress them up a little bit. But I will attempt to make sure that the person understands the gist of what I’m saying, if possible (Roger).

In this sense, Roger suggests that there is not a standardized set of words adopted by the MHC, but rather, that language is tailored to each participant’s specific level of comprehension. In so doing, legal actors present information in a way that each participant is able to understand, thereby increasing their ability to fulfill court orders. This is particularly significant, as the literature suggests that the failure to instruct actors in way that is comprehensible is likely to result in non-compliance (Goldberg, 2011).

Moreover, respondents identified several forms of non-verbal communication that are used to enhance therapeutic interactions with PMI. In particular, a number of individuals noted the use of a softer, gentler tone when addressing PMI. This was observed on numerous occasions, whereby the researcher noted the judge’s shift to a significantly softer, calmer tone when interacting with the accused compared to interactions with legal personnel.

In addition, the researcher observed a number of seemingly therapeutic non-verbal interactions. For example, on a number of occasions, various defence lawyers

placed their hands on the arms, backs, or shoulders of the accused. This was typically observed when individuals were required to speak to MHC personnel or directly interact with the judge. Both situations directed attention to the accused, which likely enhanced feelings of nervousness and anxiety. It appeared as though these hand placements calmed the nerves of the accused, and reminded and encouraged them when it was their turn to speak. As such, the researcher interpreted these gestures as a source of comfort that reassured the accused of their lawyer's support.

The researcher further observed the judges' use of direct eye contact with the accused. This was particularly apparent when reading probation terms, where judges consistently made eye contact with the accused after each term was read. The researcher also noted four separate occasions on which judges repositioned their chairs to lean closer to the accused during direct interaction and, on two instances, repositioning their chair to be closer to the individual in the prisoner's box.

In sum, respondents consistently reported and demonstrated efforts to increase the use of therapeutically beneficial language, and to avoid anti-therapeutic language in the MHC. These findings are particularly significant, as the literature suggested that confusing or harmful language in the courtroom has the ability to create intellectual barriers between the accused and the court, which can ultimately result in non-compliance. Further, the researcher noted a number of non-verbal communications that allowed actors to demonstrate interest and concern for PMI and encourage their participation.

Emergent Code 3C: Experienced Stakeholders.

Respondents identified experience among legal actors as a critical component in facilitating therapeutic interactions with PMI. In particular, throughout the interview process, respondents highlighted the fact that the court does not offer any training prior to working in the MHC. As a result, actors new to the MHC may not be aware of certain interactions that can trigger negative responses in the accused or otherwise not be in their best interests. For example,

I have seen a lawyer get quite rude and short with his clients, yelling at them. Not the approach I would take. I have seen lawyers – like the case we're doing now – who have no familiarity with mental health issues and are out of their depth. And that troubles me, because the client is not being well served. In many cases, a person more familiar with the mental health aspects of the Criminal Code and the Mental Health Act could achieve better results for their clients (Roger).

In this particular case, the accused, diagnosed with various disorders including a debilitating learning disability, was further removed from the proceedings due to a language barrier. These factors appeared to cause the accused person anxiety, as he consistently spoke out and cried throughout the court process. Becoming increasingly frustrated with the accused, the lawyer responded in an exasperated manner, stating: “you need to stop talking. You are not doing yourself any favours here.” Following this, the lawyer expressed numerous warnings, and at one point, told the translator to inform the accused that “he is going to get himself back into jail if he doesn't stop.” These responses appeared to have an adverse effect, as the accused began to act out from what appeared to be heightened fear and confusion. Further to his observation, John indicated that new lawyers are often hesitant to allow their clients to speak in court, assuming that doing so

will be to their detriment. John suggested that this is not necessarily true, and that doing so strips PMI of the opportunity to participate and voice their opinion in the court.

By acknowledging these shortcomings, which are often the result of inexperience, most of the respondents agreed that, all else being equal, experienced actors are better able to facilitate therapeutic interactions with PMI. In particular, experience affords individuals with the knowledge required to provide therapeutically beneficial treatment to PMI and, equally important, to avoid such interactions with the potential to instill fear, anger or to trigger outbursts. As such, respondents suggested that the court should seek to engage actors who have experience working with PMI. For example:

We have duty counsel who come to MHC and have some expertise in dealing with those who are suffering from mental illness. You wouldn't find that in a regular court. And indeed... well we don't have duty counsel there. We have duty counsel who are familiar and experienced in dealing with mentally ill people and that makes a big difference (Roger).

Further, Renee noted that the designated MHC judges are often experienced in working with PMI:

The judges we have in mental health court are more understanding of mental health issues, they have a better understanding of the section of the Criminal Code that deals with mental health issues, they have a better understanding of the Mental Health Act, they're more patient with our accused, they're more inclined to say "okay if we are going to adjourn this what are you going to be working on?"

Indeed, a number of MHC employees did have prior experience working with PMI. In particular, one previously worked as a nurse, and another served as a case coordination counsellor, specifically working with adult men diagnosed with schizophrenia. A third respondent indicated having experienced mental illness in his family, which shaped his desire to work in the MHC.

As such, respondents identified experience working with PMI as a critical asset in facilitating therapeutic interactions in the MHC. In particular, without experience or training, actors may not be aware of certain interactions that can trigger negative responses in the accused or otherwise not be in their best interests. In this sense, actors suggested that MHCs should take the initiative to train staff or hire actors with experience working with PMI.

CHAPTER FIVE: DISCUSSION AND CONCLUSION

This final chapter is divided into two sections. First, the discussion section addresses the research question: *What are the core principles of therapeutic jurisprudence and the indicators of each?* Using the data collected for this study, this section then answers the second research question: *Does the application of therapeutic jurisprudence principles in the MHC under study reflect the MHC Model?* The results are analyzed and discussed. Second, the conclusion section outlines the implications of this study and recommendations for future research.

Discussion

To answer the first question, the researcher reviewed the literature to extract and consolidate a) a list of the overarching principles of therapeutic jurisprudence and b) indicators of how each is applied in a MHC setting. This information was consolidated into the MHC Model, which is repeated as Table 3 for the reader's convenience.

Table 3: Mental Health Court Model

PRINCIPLES	INDICATORS OF PRINCIPLES
1) Goals	a) Balancing rights with care b) Consideration of Mitigating Factors c) Collaboration with Community Resources d) Monitored Progress
2) Rules	a) Voluntary Participation b) Teamwork Approach c) Relaxed Rules/Procedures d) Assistance throughout Court Process e) Participant Inclusion f) Family/Caregiver Inclusion
3) Interactions	a) Therapeutically Enhanced Roles b) Verbal/Non-Verbal Communication

The development of the MHC Model was a necessary step in answering the second research question. In particular, interview questions sought to determine how the court applies the principles established by the MHC Model. In addition, the Model is later compared to the findings in order to identify areas of higher and lesser consistency. In so doing, the researcher was able to generate recommendations for greater consistency with the principles, which might be considered in order to improve the court's functioning and, potentially, its outcomes.

To answer the second research question, it was first necessary to determine how the MHC being studied applies the principles of therapeutic jurisprudence. To this end, respondents were asked a series of interview questions embedded within three overarching questions: a) *How does Mental Health Court promote therapeutic solutions;* b) *How does Mental Health Court apply therapeutic rules and procedures;* c) *How does Mental Health Court facilitate therapeutic interactions?* In addition, the researcher

conducted 25 hours of observation to supplement data from the interviews. The data analysis was guided by predetermined codes (the indicators identified in the MHC Model), and further sought to establish emergent codes. The findings were presented in Chapter 4.

The researcher then compared these findings with the MHC Model to answer the second research question. With respect to the pre-determined codes, the findings produced three categories: a) “highly consistent”, where the data obtained from interviews and observations aligned with the indicator to a great extent; b) “weakly consistent”, where the data conflicted with the indicator to some or great extent; and c) “indeterminate”, where a lack of concurrence in the data prevented either designation. The analysis also generated two original indicators as to how the court applies these principles, including: “consistency and continuity” and “experience with PMI”. These findings are summarized in Table 4.

Table 4: Findings Compared to the MHC Model

Principle	Highly Consistent	Weakly Consistent	Indeterminate	New indicators
Rehabilitation & reintegration		<ul style="list-style-type: none"> ▪ Consideration of mitigating factors ▪ Link to community resources ▪ Monitored compliance 	<ul style="list-style-type: none"> ▪ Balancing rights with needs 	
Rules & procedures	<ul style="list-style-type: none"> ▪ Voluntary nature of court ▪ Including the accused ▪ Assistance throughout the court process 		<ul style="list-style-type: none"> ▪ Teamwork ▪ Including supports ▪ Relaxed courtroom atmosphere 	<ul style="list-style-type: none"> ▪ Consistency & continuity
Interactions	<ul style="list-style-type: none"> ▪ Verbal/non-verbal communication ▪ Quality of interpersonal roles 			<ul style="list-style-type: none"> ▪ Experience with PMI

Results from this analysis ultimately revealed whether the court’s application of each principle reflects the MHC Model. Where the majority of indicators pertaining to a principle were highly consistent, the researcher concluded that the court’s application of the principle reflects the MHC Model. Conversely, where the majority of indicators pertaining to the principle were weakly or not consistent, the researcher concluded that, in relation to the principle, the court does not reflect the MHC Model.³² Each principle is

³² Of note, this categorization system was inspired by New Institutionalism Theory (NIT), which posits that institutions are governed by “formal structures”, by which “coordination is routine, rules and procedures are followed, and actual activities conform to the prescription of formal structure” (Meyer &

discussed below, followed by an examination of the original indicators “consistency and continuity” and “experience with PMI”.

Principle 1: Does Not Reflect the MHC Model

The first principle of the MHC Model is that therapeutic jurisprudence promotes supports and services that are aligned with rehabilitation and reintegration. In line with categorization system explained in the above section, the data suggest that the court under study does not reflect the MHC Model. Specifically, as presented in Table 4, the data were either weakly or not consistent with the associated indicators (where the data obtained from interviews and observations conflicted with the indicator to some extent), or its status was indistinguishable (where a lack of concurrence in the data prevented a designation of either highly or weakly consistent).

There are a number of factors that can assist in explaining the weakly consistent indicators. Specifically, respondents emphasized that the MHC under study is substantially impeded by a lack of funding and resources. This structural and externally imposed reality has a cascading effect on the coupling of the remaining indicators, all of which require and flow from the availability of community resources. For example, a rich array of community supports and resources is a necessary condition for the court to utilize diversion in place of traditional sentencing. In the former, participants do not enter a plea, whereas in the latter, they must enter a guilty plea, resulting in a qualitatively different experience at the very beginning. Without adequate community resources, the court under study was impeded in its ability to use diversion, and had little choice but to

& Rowan, 1977, p. 342). As institutions evolve, expansion often occurs in the form of lower levels or sub-units, referred to as organizations (Meyer & Rowan, 1977). NIT inquires as to whether formal structures accurately reflect the day-to-day activities of contemporary organizations. Specifically, organizations can “tightly coupled” (reflect), or “loosely coupled” (not reflect) institutions.

fall back on traditional responses to crime (such as probation). This, in turn, directly affected the indicator “balanced responses to crime”, where the majority of respondents characterized the court as punitive, suggesting that it does not place priority on addressing individuals’ disorders and associated needs to the extent needed.

However, this characterization is best interpreted as one of degree rather than kind, and does not imply that the court fails completely to balance its responses to crime. In this regard, several respondents outlined alternative to diversion that the court adopts to balance dispositions. For example, the court would routinely adjourn proceedings to grant participants the opportunity to become engaged in treatment programs and support services. To some extent, this alternative mirrors the diversion option by granting participants opportunities to address their underlying disorders and circumstances. Although they are not diverted from the need to enter a plea, participants are afforded the time to better situate themselves for sentencing. Thus, despite being impeded from applying the indicator as described in the MHC Model, the court nonetheless achieves a reasonable work-around within the constraints it faces.

This shortcoming further affected the degree to which the remaining indicators were consistent with the literature. For example, the literature described “monitored compliance” strictly in the context of presumed diversion, and did not contemplate circumstances where diversion was not possible. Accordingly, the court under study was unable to monitor compliance in the manner and to the extent contemplated in the literature, and the data from respondents were judged to be weakly consistent in relation to this indicator.

However, despite this apparent shortcoming, respondents did identify two innovative ways in which the court monitors participants: a) granting a series of adjournments that allow accused persons to improve their circumstances prior to sentencing; and b) frequently relying on probation as a disposition. In the former, at each scheduled return date, the court officers learn the details of the participant's progress or lack thereof, and are able to align the disposition with these efforts. In the latter, participants are monitored by probation officers under specific terms and conditions, and the court can conclude that an absence of reports documenting breaches suggests a degree of success (reflected as the "no news is good news" criterion). Thus, similar to the previous indicator, the court works around the impediments it faces to achieve a degree of monitoring in ways that reflect its constraints and resources. In so doing, it may not attain the ideal, but neither can it be considered a failure to monitor compliance.

Further, within a diversion perspective, the literature states that MHCs "consider mitigating factors" in designing effective alternatives to punishment. Once again, the presumption of a required array of community resources resulted in the data being weakly consistent with this indicator. In this regard, the court under study does endeavour to consider such factors for dispositions outside of diversion. For example, it will consider issues pertaining to housing and substance abuse, and align them with appropriate responses to the extent possible. However, as reported by most respondents, such attempts are significantly impeded by the lack of resources, as are the prospects of rehabilitation and reintegration.

Thus, with respect to this principle, the MHC Model posits an "ideal" that fails to contemplate the specific demands and impediments faced by the court under study.

Unaligned with the assumption of available resources and diversion as the primary disposition, it logically follows that the associated indicators will be weakly consistent. However, this is not to say that the court fails to apply this principle to any extent. Rather, the findings demonstrate that the court's application of this principle reflects the demands and obstacles it faces, and causes it to veer from the prescription of the MHC Model.

Principle 2: Indeterminate

The second principle of the MHC Model is that therapeutic jurisprudence promotes therapeutic rules and procedures over those that might be considered anti-therapeutic. In this respect, the findings prevented the researcher from determining with reasonable certainty whether the court under study reflects the MHC Model. As presented in Table 4, data pertaining to the associated indicators were either highly consistent, or indeterminate due to a lack of concurrence among respondents. Highly consistent indicators included: voluntary nature of the court, including the accused, and assistance throughout the court process. Indeterminate indicators included: teamwork, inclusion of support networks, and a relaxed courtroom.

Highly Consistent Indicators

There are a number of factors that can explain the highly consistent indicators. In particular, these indicators were evidently more likely to include aspects of the court that would remain constant in the face of varying demands. Specifically, these tended to include foundational rules and functions, and elements that serve to increase the court's legitimacy and survival. For example, with respect to the "voluntary participation" indicator, respondents acknowledged that the MHC is prohibited by the *Criminal Code of Canada* from coercing individuals into treatment or to take medication. Accordingly, this

indicator serves as a foundational component that is enforced by the law. As such, this would be a highly consistent element of any Canadian MHC regardless of extraneous demands or impediments.

The indicators “assistance throughout the MHC” and “incorporating the accused” can also be described as foundational elements of the court in that they ensure its legitimacy and survival. MHCs developed as a response to the unfair and, arguably, inappropriate treatment of PMI in the criminal justice system. Each of these indicators address this core proposition. Specifically, failing to provide various forms of assistance would leave participants to navigate the criminal justice system on their own, defeating the purpose for which the court was established. Similarly, respondents suggested that inclusion of the accused in the decision-making is critical, as PMI are more likely to invest in goals they personally establish. Therefore, failure to include participants would compromise compliance with court requirements, and undermine the effectiveness and legitimacy of the court. As such, these indicators critically differentiate the MHC from its traditional court counterpart and, thereby define its legitimacy and survival.

Indeterminate

Three indicators, “teamwork”, “inclusion of support networks”, and “relaxed courtroom”, were found to be indeterminate. These indicators are not necessarily foundational characteristics of the court as described above and, therefore, were more susceptible to interpretation. As a result, responses varied considerably, rendering these indicators indiscernible as either highly or weakly consistent. In examining the findings, several factors appear to have contributed to the conflicting data.

Foremost, responses were seemingly influenced by respondents' roles in the MHC. For example, those with a greater sense of power and control over participants' outcomes were more inclined to describe the MHC as a teamwork approach, and tended to suggest that families were involved throughout the decision making process. Conversely, those with less decision-making power with respect to dispositions generally refuted such claims, and described the MHC as an adversarial system where vested interests frequently conflict. Further, these respondents more commonly denied that the court included families throughout the decision-making process.

Moreover, as with all qualitative studies, it is conceivable that responses were affected by respondents' backgrounds and identities. For example, a few respondents stated that they had prior experience and training working with PMI. This characteristic in and of itself could potentially influence their perception on what constitutes therapeutic and anti-therapeutic rules and procedures when compared to someone with no prior experience.

Thus, with respect to the second principle, the researcher was unable to determine with reasonable certainty whether the court under study reflects the MHC Model. Three indicators were highly consistent with the MHC Model, while three others were indistinguishable due to a lack of concurrence among respondents.

Principle 3: Reflective

The third principle of the MHC Model is that therapeutic jurisprudence promotes therapeutic interactions over those considered anti-therapeutic. In this instance, the data suggest that the court under study does reflect the MHC Model. In particular, the data are highly consistent with both of the associated indicators. Consistent with the analysis

under Principle 2, “therapeutic language” and “therapeutically enhanced roles” are indicators that would: a) likely remain constant amongst MHCs even in the face of extraneous demands or impediments, and b) unambiguously differentiate the MHC from traditional criminal courts, thereby enhancing its legitimacy and survival.

Conceptually, these indicators merely require court actors to modify their language and behaviour towards PMI. In this sense, these indicators would likely be impervious to external conditions and impediments. The only conceivable impediment preventing the application of these indicators would be the actors’ unwillingness to modify their interactions. However, this is unlikely in a court where individuals voluntarily work. Beyond this, outcomes could potentially differ in MHCs in which the actors are involuntarily assigned to work, a possibility that might be explored by future studies.

Moreover, these indicators can be described as foundational elements of the court in that they are central to and ensure its legitimacy and survival. As discussed, MHCs developed as a response to the unfair and, arguably, inappropriate treatment of PMI in the criminal justice system. In a similar fashion to the highly consistent indicators in the previous principle, these indicators address this core proposition. Both serve to create a more approachable and welcoming environment for PMI to participate, thereby removing significant barriers to success in the court. Moreover, “therapeutic language” is necessary to ensure participants understand their court orders and requirements. In this sense, both indicators serve to improve participants’ ability to succeed, and thereby enhance the legitimacy, and thus survival, of the court.

Original Indicators

Finally, respondents identified two original indicators as to how the MHC applies the principles of therapeutic jurisprudence. In relation to therapeutic interactions, respondents recognized the need for “experienced stakeholders”. Additionally, with respect to therapeutic rules and procedures, respondents identified the need for “increased consistency and continuity”. It is likely that these indicators would have been overlooked by the literature as they serve to resolve specific impediments in the court under study.

For example, respondents revealed that the court essentially functions as an ad-hoc organization through the voluntary efforts of various actors and, as such, imposes no requirements for formal training or prior experience working with PMI. Respondents recognized the potential for actors to unwittingly facilitate anti-therapeutic outcomes, and agreed that, all else being equal, experienced actors are better able to facilitate therapeutic interactions with PMI. In particular, experience affords individuals with the knowledge and skills required to provide therapeutically beneficial treatment to PMI and, equally important, to avoid interactions with the potential to instill fear or anger or trigger outbursts. These findings suggest the need for some form of training in the MHC, which is further discussed in the following section under “Implications Specific to this Study”.

Respondents further identified the therapeutic benefit of consistency and continuity in the courtroom. In addition to frequent adjournments, the court under study generally rotates among four designated MHC judges and various individuals who serve as duty counsel. As a result, participants can make multiple appearances that involve a number of different legal actors. Respondents noted that rotation of this nature can be disorienting and even overwhelming in an already complex court system. As a solution, respondents

highlighted the court's attempt to create a sense of consistency in spite of a rotating staff roster. This, in effect, allows the often-anxious participants to appear among familiar faces, with some indication of what to expect from each. In addition, it ensures continuity in the disposition, where the judge is up-to-date on the participant's progress and can subsequently make informed decisions on how best to proceed.

In each circumstance, the newly identified indicators are solutions to issues that are seemingly specific to the court under study. In particular, the indicator "experienced actors" may not be relevant to other MHCs, where it is a given. Similarly, courts with designated actors may not experience difficulties arising from consistency and continuity. The extent to which this circumstance extends to other MHCs might be investigated in future research, and whether it is a common obstacle that has been overlooked by the literature.

Conclusion

In summary, studies to date have failed to explicitly examine how MHCs apply the principles of therapeutic jurisprudence. Moreover, an extensive review of the literature failed to locate a single-sourced enumeration of these principles, which in turn, has constituted a barrier to the rigorous examination of how MHCs have applied the theory. To address these circumstances, the present study conducted an extensive review of the literature to extract and consolidate: a) the overarching principles of therapeutic jurisprudence and b) indicators of how each principle is applied in a MHC setting. With the resulting consolidation organized into a MHC Model, the study then determined how a MHC applies the overarching principles. Data from study respondents and observations

were compared with the MHC Model to establish areas of strong and weak alignment. The findings suggest several implications and avenues for future research

Implications of MHC Model

The development of the MHC Model serves as an original contribution to the literature, and provides the first single-sourced description of the principles of therapeutic jurisprudence and indicators of how each is applied in a MHC setting. This Model can be used as a template to examine how other MHCs apply these principles, and enables researchers to identify specific areas of stronger and weaker alignment. Addressing outlined weaknesses has the potential to form the basis for improving MHC functions and outcomes.

Implications Specific to this MHC

The findings suggest that the court's application of the first and second principle does not reflect the MHC Model. This process fostered the development of recommendations by which the court could attain stronger alignment with the principles. The court might consider adopting any or all of these recommendations in its ongoing efforts to improve its functioning and alignment with other courts that have achieved a positive impact on rehabilitation, reintegration, and recidivism.

With respect to the first principle, (therapeutic jurisprudence promotes supports and services that are aligned with rehabilitation and reintegration), the court is well advised to consider advocating at the local or provincial levels for a greater investment in community resources dedicated to PMI. Success in this regard would allow the court to utilize diversion as its primary disposition and strengthen the degree of consistency amongst the indicators that rest on its application. Of particular note, there is a critical

need for advocacy to address the housing needs of PMI who come in contact with the law. Both prior research and study respondents noted that, until housing needs are addressed, other endeavours aimed at rehabilitation are essentially futile. Thus, advocacy for increased services and supports would serve to strengthen the court's alignment with the first principle which, in turn, holds strong potential to improve outcomes.

With respect to the second principle, (therapeutic jurisprudence promotes therapeutic rules and procedures over those that might be considered anti-therapeutic) the findings suggest a lack of clarity and understanding regarding certain aspects of the court. Of note, the majority of respondents were unable to define therapeutic jurisprudence, the construct on which the court is founded. Findings of this nature suggest the need for training and/or program development initiatives within the court to enhance levels of common understanding. For example, in addressing the indeterminate factors, training could: a) provide strategies to practice and improve teamwork; b) outline and discuss the benefits of including support systems throughout the decision-making process; and c) speak to the need for leniency with respect to rules and regulations within the courtroom. The findings suggest that it would be to the court's advantage to provide such training in order to address the outlined constraints. Moreover, general education to address the nature of the therapeutic jurisprudence approach might further enhance conceptual and functional consensus about how the court functions. This could be further beneficial to other MHCs.

Future Research

First, the findings of this study suggest that the MHC literature does not contemplate the possibility of factors that impede or prevent the application of

therapeutic jurisprudence in MHCs. Examination of the court under study makes a strong case for future research to consider and legitimize alternatives as to how MHCs might apply the principles of therapeutic jurisprudence in less than ideal circumstances. As a start, future research might study options for applying therapeutic jurisprudence in courts that are impeded by a lack of funding and resources. Broadening the perspective in this manner would recognize the realities faced by some courts, and legitimize their efforts to accommodate these realities. Of particular interest would be studies to assess recidivism rates attained by MHCs under less than ideal circumstances (i.e. those that are weakly consistent with the MHC Model as in the present case).

Second, prior research assumes the consistent application of therapeutic jurisprudence among MHCs. As a result, specific findings from such studies tend to be generalized to most or all MHCs. The present study undermines the validity of such generalizations. However, even when MHCs have the requisite services and supports, they are likely to vary in ways that, for the most part, remain unrecognized or unreported. This suggests that comparability among MHCs is difficult. To address this situation, a comparative examination of MHCs is needed in order to define and understand a continuum to reflect common variations. Studies of this nature might use the MHC Model established in this study, and draw from its methods. Comparative benchmarking in this manner would ultimately permit studies to generalize findings between similarly aligned MHCs.

Further, such research might examine the extent to which MHCs, across the continuum, utilize diversion. In particular, a comparison of this nature could determine whether greater alignment with the principles and associated indicators does in fact

enhance a MHC's use of diversion. Such investigations would identify the constraints that impinge on the use diversion, and would form the basis for developing evidence-based strategies to increase its use.

As a final consideration, with the exception of critical criminological scholarship, prior research tends to assume that therapeutic jurisprudence is unequivocally beneficial to defendants, and is a less punitive intervention than traditional courts. However, a growing body of literature challenges this assertion and questions the benefit of "therapeutic alternatives". In particular, these studies suggest that seemingly therapeutic aspects of specialized courts can, in fact, substitute equally punitive measures³³.

For example³⁴, certain specialized courts in Ontario have been found to prolong the duration of bail, thereby allowing defendants time to complete court-mandated treatment.³⁵ This is "therapeutically justified", as it affords defendants the opportunity to complete specific programs to address their identified needs. However, these critiques question the benefits of court-mandated treatment, suggesting it can involve the introduction of additional punitive outcomes³⁶ and the imposition of more criminal

³³ It is noteworthy that Hannah-Moffat & Maurutto (2012) acknowledge punitive consequences to be inadvertent consequences of therapeutic practices. Alternatively, Moore (2007) suggests that punishment is disguised by therapeutic terminology.

³⁴ As a specific example of these arguments, Hannah-Moffat & Maurutto (2012) examined Ontario's Early Intervention Domestic Violence Court, which requires offenders to complete a Partner Abuse Response Services (PARS) counselling program as a condition of bail. This entails 16 weeks of counselling, where participants learn non-violent alternatives for dealing with anger. Despite its therapeutic intentions, many female partners were required to participate as a result of Ontario's dual charge policy (where police avoid arbitrating disputes and, instead, criminally charge both parties). Further, women had difficulty accessing counselling programs due to limited spaces, resulting in extended periods of bail supervision and even longer sentencing delays.

³⁵ For example, Hannah-Moffat and Maurotto (2012) note that both Drug Treatment Courts and Early Intervention Domestic Violence Courts in Ontario commonly prolong bail for their associated treatment programs. Both are identified as specialized courts that are guided by therapeutic jurisprudence.

³⁶ Hannah-Moffat & Maurutto (2012) suggest: "When access to treatment and social service resources is mandated by courts, new punishment strategies arise. Preventative therapeutic measures are combined

charges if compliance is not achieved³⁷. In so doing, such practices appear to conflict with section 720 of the Criminal Code of Canada, which requires sentencing as soon as possible after conviction (Hannah-Moffat & Maurutto, 2012).³⁸

Although included among specialized courts, MHCs in general have not been subjected to similar critical analysis, and whether the noted problems apply has yet to be determined. This suggests the need for additional research to examine whether MHCs introduce additional punitive measures in similar fashion.

Further, as a case study, the findings of this research are limited to the observed court, and might theoretically contribute to this growing body of critical literature. In particular, due to the lack of adequate community resources, the MHC was impeded in its ability to employ diversion, and had little choice but to fall back on traditional responses such as probation. As a result, the majority of study respondents portrayed the MHC as overly punitive, suggesting that it fails to address individuals' underlying disorders and associated needs to the extent it should. Including MHCs in these critiques of specialized courts would require further research to determine whether these findings are more

with, and enforced through, a range of punitive conditions—preventative therapeutic practices have not eroded punishment, instead they are reassembled and repackaged” (p. 206). For example, an offender’s access to services and treatment may coincide with the imposition of a range of more intrusive and disciplinary conditions that ensure and regulate their attendance and compliance. The authors indicate that defendants in Drug Treatment Court may receive as many as 40 conditions over their extended bail period.

³⁷ For example, breaches in Ontario Drug Treatment Courts are at times punished with short stints in custody and additional sanctions, such as a requirement to do community service hours (Hannah-Moffat & Maurutto, 2012).

³⁸ In a traditional bail court, cases are processed as quickly as possible and treatment is not typically mandated prior to sentencing. Conversely, in certain specialized courts, bail is extended, sometimes for as long as two years, to enable offenders to complete treatment programs prior to sentencing (Hannah-Moffat & Maurutto, 2012).

widespread. Should they exist on a larger scale, future research should consider whether MHCs, in less than ideal circumstances, are in fact less punitive than traditional courts.

Concluding Statements

MHCs are relatively new developments, and require ongoing research for improvement. This study contributes to this growing body of research in two respects. First, it establishes a clearer understanding of what is meant by “therapeutic jurisprudence” by consolidating its overarching principles and the indicators for each. Second, it sheds light on the reality that MHCs may face limitations beyond their control that prevent the application of therapeutic jurisprudence in line with the ideal reflected in the literature.

Nonetheless, the present study should in no way be considered a negative critique of the examined MHC. It is crucial to appreciate that the court was established by a handful of volunteers with little to no financial support and an inadequate range of community services and supports. It was driven by an idea of what was right for the PMI it encountered, and a commitment to do the best possible. As such, it is of central importance to acknowledge the efforts and dedication of the stakeholders despite the challenges and impediments they face daily. Without this court, PMI would be processed in the traditional court system, which is unable to accommodate or address their needs. Should the court under study consider adopting the proposed recommendations, it has the potential to improve its alignment with therapeutic jurisprudence.

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Appendix A

Interview Schedule

With your permission, I'm going to begin recording our conversation now (*wait for response to begin recording*). I am going to now ask you a series of questions regarding the Mental Health Court. Please be assured (as you read in the information letter) that your identifying information will be separated from your responses here to protect your privacy. At times, I will also ask you about historical or current experiences or examples you have. I will be doing this to make the concepts more tangible. Please know that I will also treat these examples and any groups or individuals identified confidentially, and that all identifying information will be removed. Feel free to skip questions and also to return to any question at any time during the interview if you have more you would like to add. Do you have any questions before we begin?

Introductory Questions:

- 1) What is your affiliation with the Mental Health Court?
- 2) How long have you been affiliated with the Mental Health Court?
- 3) The concept of therapeutic jurisprudence is often associated with Mental Health Courts. What is your understanding of this concept?

R1: *How does Mental Health Court promote therapeutic solutions?*

Q1: In your opinion, what is the overall goal of the Mental Health Court?

Q2: How does this goal differ from that of the traditional court?

Q3: What are some of dispositions arrived at in mental health court?
○ How does these compare to traditional courts?

Q4: What is considered in formulating these dispositions?

Q5: What are some of the programs Mental Health Court participants attend?
• Who runs the programs?
• How does the court encourage compliance?

R2: *How does Mental Health Court apply therapeutic rules and procedures?*

Q6: Which specific rules and procedures found in traditional courts might be considered anti-therapeutic?

Q7: How do the rules and procedures differ from traditional criminal courts?

Q8: Who is consulted in constructing an appropriate plan for each Mental Health Court participant?

Q9: How does the Mental Health Court expedite the development of a plan?

Q10: How is the participant incorporated into the development of a plan?

R3: How does Mental Health Court facilitate therapeutic interactions?

Q11: How do you facilitate positive interaction with Mental Health Court participants?

Q12: What would you consider to be anti-therapeutic when interacting with a participant of the Mental Health Court? How is this avoided?

Q13: How would you describe your role in a Mental Health Court?

Q14: What type of language is used when interacting with Mental Health Court participants?

- What type of language is avoided?

Concluding Question:

Q15: Overall, what do you think works well in Mental Health Court? What doesn't?

Conclusion:

- 1) Is there anything else you would like to add that my questions haven't addressed?

(Wait to make sure the participant has no further questions or comments). At this point, I would like to sincerely thank you for taking the time to talk to me today. If you would like, when this study is complete, I would be happy to provide you with a copy of the literature review and a summary of findings. If you would like a copy of these findings, or if you have any questions about the study, please contact me at the email address listed on your information letter. I would like to reassure you that all the information you have provided will be kept completely confidential. Your name or any other personal identifying information will not appear in any documents resulting from this study. Do you have any questions? *(Wait for response.)* Thank you again for your participation.

Appendix B Recruitment Letter

Hello (*participant's name will be inserted*),

My name is Anne Simpson and I am a Master's student in the Department of Sociology and Legal Studies at the University of Waterloo. I am conducting research under the supervision of Dr. Jennifer Schulenberg on the theoretical underpinnings of the Mental Health Court. This study seeks to examine how the Mental Health Court applies the principles of therapeutic jurisprudence. I would appreciate the opportunity to speak with you given your association with, and knowledge regarding, the Mental Health Court. Participation in this study involves one interview of approximately 45-60 minutes. Your involvement in this study is entirely voluntary and you may decline to answer any questions without penalty. All information you provide will be considered confidential. This study has been reviewed by and received ethics clearance through a University of Waterloo Research Ethics Committee. However, the final decision about participation is yours.

Attached, you will find an information letter with further details on the project. If you are interested in participating, please contact me at amsimpso@uwaterloo.ca, or by telephone at (519) 827-5548 and we will arrange a day, time and location convenient for you during which we can conduct the interview.

Thank you in advance for your interest in this project.
Sincerely,

Anne Simpson

Appendix C

Letter of Information

Dear *(participant's name will be inserted)*:

This letter is an invitation to participate in a study I am conducting in part of my Master's degree in the Department of Sociology and Legal Studies at the University of Waterloo under the supervision of Dr. Jennifer Schulenberg. I would like to provide you with more information about this project and what your involvement would entail if you decide to participate.

The first part of the study consolidates the literature into a set of key principles and indicators of "therapeutic jurisprudence". From this exercise, I have developed a set of questions for the second part of this study. In part two, I will be interviewing people who are directly involved with the Mental Health Court, and will ask about their perceptions of how therapeutic jurisprudence is applied by the court. The questions do not test your knowledge of therapeutic jurisprudence theory, but rather, asks about the procedures and operations in which you are currently involved.

The study will contribute to theoretical knowledge about therapeutic jurisprudence, and how it is applied in practice. Your participation will assist in generating an original contribution to the literature, as this is the first study to examine how the principles of therapeutic jurisprudence have been applied by a Mental Health Court. Moreover, it opens the door to future studies using the same methodology to compare multiple courts, and has the potential to help refine their effectiveness over time.

Participation in this study is voluntary. Your decision to participate or not, will not be shared with other members of the Mental Health Court or other participants in the study. It will involve one interview of approximately 45-60 minutes. You may decline to answer any of the interview questions if you so wish. Further, you may decide to withdraw from this study at any time by advising the student investigator. With your permission, the interview will be audio-recorded to facilitate data collection and later transcription for analysis. All information you provide is considered completely confidential. Your name or any other personal identifying information will not appear in the thesis resulting from this study; however, with your permission, anonymous quotations may be used. While your identity will remain confidential, given that the court will be referred to as a 'Mental Health Court in Southwestern Ontario', it is possible that a motivated individual may infer your identity. Notes and audio recordings collected during this study will be retained for a period of one year after study completion in a locked filing cabinet in my supervisor's on-campus office. Electronic data will be stored on a password protected computer and an encrypted USB drive. There are no known or anticipated risks to you as a participant in this study.

If you have any questions regarding this study, or would like additional information to assist you in reaching a decision about participation, please contact me by email at

amsimpso@uwaterloo.ca, or by telephone at (519) 827-5548. You can also contact my supervisor, Dr. Jennifer Schulenberg by telephone at (519) 888-4567, ext. 38639 or by email at jlschule@uwaterloo.ca. If you would like a copy of the final thesis, please indicate this request to the researcher, Anne Simpson, through the provided contact information.

This project has been reviewed and received ethics clearance through a University of Waterloo Research Ethics Committee. However, the final decision about participation is yours. Participants who have concerns or questions about their involvement in the project may contact the Chief Ethics Officer, Office of Research Ethics at 519-888-4567, Ext. 36005 or maureen.nummelin@uwaterloo.ca.

I hope that the results of my study will be of benefit to those organizations directly involved in the study, other voluntary recreation organizations not directly involved in the study, as well as to the broader research community.

I very much look forward to speaking with you and thank you in advance for your assistance in this project.

Sincerely,

Anne Simpson

Appendix D
Consent of Participation

By signing this consent form, you are not waiving your legal rights or releasing the investigator(s) or involved institution(s) from their legal and professional responsibilities.

I have read the information presented in the information letter about a study being conducted by Anne Simpson of the Department of Sociology and Legal Studies at the University of Waterloo. I have had the opportunity to ask any questions related to this study, to receive satisfactory answers to my questions, and any additional details I wanted. I am aware that I may withdraw from the study without penalty at any time by advising the researchers of this decision.

This project has been reviewed by, and received ethics clearance through a University of Waterloo Research Ethics Committee. I was informed that if I have any comments or concerns resulting from my participation in this study, I may contact the Director, Office of Research Ethics at 519-888-4567 ext. 36005.

I agree to be audio recorded for transcription and analysis purposes: Y/N

I agree to the use of quotations in the thesis and papers which emerge from this study:
Y/N

With full knowledge of all foregoing, I agree, of my own free will, to participate in this study.

Print Name

Signature of Participant

Dated at the Waterloo Court House, Ontario

Witnessed

Appendix E Feedback Letter

Dear *(participant's name will be inserted)*,

I would like to thank you for your participation in this study entitled “Examining the Application of the Principles of Therapeutic Jurisprudence in a Mental Health Court”. As a reminder, the purpose of this study was to establish a consolidation of the literature to date, which included the overarching principles of therapeutic jurisprudence as well as the ways it could be applied in a Mental Health Court. Further, this study sought to examine how the Mental Health Court applies the principles of therapeutic jurisprudence.

The first part of the study consolidated the literature into a set of key principles and indicators of “therapeutic jurisprudence”. From this exercise, I developed a set of questions for the second part of this study. In part two, I interviewed people who are directly involved with the Mental Health Court, and asked about their perceptions of how therapeutic jurisprudence is applied by the court. The questions did not test your knowledge of therapeutic jurisprudence theory, but rather, asked about the procedures and operations in which you are currently involved.

The study contributes to theoretical knowledge about therapeutic jurisprudence, and how it is applied in practice. Your participation assisted in generating an original contribution to the literature, as this is the first study to examine how the principles of therapeutic jurisprudence have been applied by a Mental Health Court. Moreover, it opens the door to future studies using the same methodology to compare multiple courts, and has the potential to help refine their effectiveness over time.

Please remember that any data pertaining to you as an individual participant will be kept confidential. Once all the data are collected and analyzed for this project, I plan on sharing this information with the research community through seminars, conferences, presentations, and journal articles. If you are interested in receiving more information regarding the results of this study, or would like a summary of the results, please provide your email address, and when the study is completed (anticipated by September 2015) I will send you the information. In the meantime, if you have any questions about the study, please do not hesitate to contact me by the email address noted below. Alternately, you may contact my supervisor, Dr. Jennifer Schulenberg at jlschule@uwaterloo.ca, or by telephone at (519) 888-4567, ext. 38639. As with all University of Waterloo projects involving human participants, this project has been reviewed and received ethics clearance through a University of Waterloo Research Ethics Committee. Participants who have concerns or questions about their involvement in the project may contact the Chief Ethics Officer, Office of Research Ethics at 519-888-4567, Ext. 36005 or maureen.nummelin@uwaterloo.ca.

I hope that the results of my study will be of benefit to those organizations directly involved in the study, other voluntary recreation organizations not directly involved in

the study, as well as to the broader research community. If indicated, a copy of the final thesis will be sent to you upon completion through your outlined method of contact.

Thank you for your assistance in this project.
Sincerely,

Anne Simpson

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