

# Halton Human Services and Justice Coordinating Committee

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## Mental Health Court Project Report

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# HALTON MENTAL HEALTH COURT PROJECT REPORT

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## INTRODUCTION

Johnston Consulting is presenting this report as the culmination of the Halton Mental Health Court Project, undertaken for CMHA Halton on behalf of the Halton Human Services and Justice Coordinating Committee (HSJCC).

## BACKGROUND

In late November 2011, the author met with Lloyd Bowers, Manager of Partnership Programs, CMHA Halton, to discuss options for a project to be undertaken for the Halton HSJCC. One of those options was the collection of data to inform the development of a Mental Health Court for Halton Region.

On January 27, 2012, Justice Stephen Brown convened a meeting of local stakeholders at which he announced his intention to introduce a Community Treatment Court for the Region as of May 2012. In response to that announcement, the focus of the 'Data Collection Project' shifted to identifying options for the structure and operation of the court to be developed.

## PROCESS

The options described in this report were identified through the following process:

1. Review of the available research
2. Key Informant Interviews with:
  - Justice Stephen Brown, Ontario Court of Justice, Halton Region
  - Linette Fritzley, Assistant Crown Attorney, Waterloo Region
  - Ted Graham, Defence Counsel/Federal Agent prosecuting drug offenses, Halton Region
  - Chris Higgins, Team Lead, Forensic Mental Health, Ministry of Health and Long-Term Care
  - Charon Kerr, Deputy Crown Attorney, Halton Region
  - Jonathan King, Manager, Mental Health and Justice Program, CMHA York Region
  - Courtenay McGlashen, Manager, Mental Health and Justice Program, CMHA Peel Region
  - Madame Justice Heather Perkins-McVey, Ontario Court of Justice, Ottawa
3. Development of a template for review of Mental Health Court models
4. Analysis of the information
5. Preparation of the Court Comparison Chart (pages 6 - 13 of this document)

## FINDINGS

Perhaps the most remarkable finding of this study was the number of initiatives currently underway to develop specialty courts. Fledgling courts, or efforts to create them, were identified in Belleville, Barrie and, further afield, in Winnipeg. Clearly, the value and utility of such courts is broadly recognized.

Their focus, structure and design, however, differ considerably – from courts that specialize in *either* mental health *or* addictions, to mental health courts that *also* deal with drug offenses committed by people with concurrent disorders, to those that handle *both* mental health and addictions. Some courts operate five days a week with permanent staff, while others sit much less frequently, with Crowns, judges and defense attorneys who ‘rotate’ through on irregular schedules.

That variability is to be expected, given that there is currently no standard definition of what constitutes a ‘mental health court’. That leaves each jurisdiction to find its own way, to establish its own structures, and to create a model that best reflects the needs (and available resources) of its community. Although that degree of flexibility may help to ensure the court’s success in the long term, it presents challenges in the formative stages, when a ‘roadmap’ could facilitate its design and development.

Not only is there no ‘roadmap’, there is also no comprehensive inventory of courts that concern themselves with mental health issues. Consequently, the ability of one court to learn from another is contingent on happenstance and periodic research (such as this study) commissioned by one or another of the existing or incipient courts.

## Experience in Other Jurisdictions

Information was obtained about the Courts currently operating in Kitchener, The Region of Peel and Newmarket. The summary that follows describes each of those courts with respect to eleven key characteristics:

- Date of inception
- Frequency
- Volume
- Location
- Staffing
- Objectives
- Eligibility
- Type of Offense
- Processes
- Assessments/Other Psychiatric Services Provided
- Special Features

### *Date of Inception*

The Peel court is the most 'mature' – having been established in 2000. Courts in Kitchener and Newmarket were created in 2005 and 2006 respectively.

### *Frequency*

All three courts began with a one half-day per week schedule. Peel subsequently added a second half-day to accommodate increasing volume, while the Waterloo court now meets for a full day.

### *Volume*

Waterloo is the only jurisdiction of the three to collect statistics related to the number of people who appear before the court (232 in 2011). Newmarket estimates 100 new cases totaling 300 appearances, while no data is available from Peel.

### *Venue*

Courts in both Peel and Waterloo were originally located in trial courts – where the Waterloo court remains. Peel opted to relocate to a pre-trial court in 2003 to address scheduling concerns and process delays (see Issues section) and reports much improved efficiency as a result. Newmarket located its Community Treatment court in a sentencing court.

### *Staffing*

In each of the three courts, Court Support Program staff from the local Branch of the Canadian Mental Health Association provide a consistent presence. In the case of the Newmarket court, that resource is supplemented by an addiction worker from Addiction Services of York Region. Waterloo's court has access to staff specializing in youth, homelessness (through The Working Centre), and Dual Diagnosis (co-occurring mental health issues and developmental disabilities) through the Central West Network of Specialized Care. In all cases, a small number (3-4) of judges rotate through the court, as do Duty Counsel. Dedicated Crown Attorneys are present in both Newmarket and Waterloo while, in Peel, three or more Crowns rotate through the court.

### *Objectives*

Only Waterloo has established a formal statement of objectives for its Mental Health Court (see Chart). Efforts are currently underway to develop such a statement for the Peel court, as part of a larger 'visioning' process. Newmarket is not yet engaged in such a process, but representatives of that court believe it to be foundational to the court's further development.

### *Eligibility*

Most individuals with a diagnosed *or diagnosable* mental illness are eligible for consideration in all three courts. Waterloo, however, excludes those with anti-social personality disorder, paraphilia or drug-induced psychosis. The Waterloo and Newmarket courts are also available to individuals with developmental disabilities, Fetal

Alcohol Spectrum Disorder, Acquired Brain Injury and dementia. Although all three courts serve people with co-occurring substance use (I.e. Concurrent Disorders) none of the three consider cases involving substance use only. Waterloo specifies that it will only hear cases involving eligible individuals *if there is a nexus between the disorder and the alleged offense*.

### *Type of Offense*

Courts in both Waterloo and Peel deal with every type of offense - up to and including attempt murder – while the Newmarket Community Treatment court is limited to potentially divertible Class One and Two offenses.

### *Processes*

All three courts report that they deal with the following processes:

- Diversion
- Bail release orders
- Other *Criminal Code* s. 672 hearings
- Crown pre-trials
- Judicial pre-trials
- Fitness hearings
- Guilty pleas
- NCR hearings
- *Mental Health Act* orders

Newmarket, however, notes that it hears pre-trials, fitness hearings and guilty pleas only ‘occasionally’ and NCR hearings ‘rarely’. In addition to those common processes, the Waterloo court also deals with trials and preliminary inquiries that are expected to be under 3 hours in length.

### *Assessments/Other Psychiatric Services Provided*

Both Peel and Waterloo have access to in-court psychiatrists – through the Centre for Addiction and Mental Health, in the case of the Peel court, and through Grand River Hospital (thanks to special funding provided by the Ministry of Health and Long-Term Care) in the case of Waterloo. The Newmarket court – which has no immediate access to psychiatric assessments – must remand the accused to the nearest available psychiatric hospital (usually Ontario Shores in Whitby or Waypoint in Penetanguishine) for assessment.

### *Special Features*

Key informants in the Regions of Peel and Waterloo identified features of their courts that they considered 'exceptional'. Peel cited a fully developed court support program that includes education and a case management component, and particularly productive working relationships among the judiciary, the defense bar, the crown's office, the police, and the mental health system. Waterloo, on the other hand, identified two specific products - the development of protocols (e.g. *Protocol to Guide Police Officers when Dealing with Persons from Mental Health Court*, and *Protocol to Guide the Sharing of Information between the Crown Attorney's Office of the Regional Municipality of Waterloo and the Canadian Mental Health Association, Grand River Branch*) and the publication of *Mental Health, the Justice System and You: Understanding The Process and the People that Can Help* – a comprehensive guide to the legal process for clients, their friends and families.

The chart on the following pages offers additional details with respect to each of the three courts:

Court Comparisons Chart

FEATURE	PEEL	NEWMARKET COMMUNITY TREATMENT COURT	REGION OF WATERLOO MENTAL HEATH COURT
Inception	<ul style="list-style-type: none"> <li>• ~2000*</li> </ul>	<ul style="list-style-type: none"> <li>• ~2006</li> </ul>	<ul style="list-style-type: none"> <li>• 2005</li> </ul>
Frequency	<ul style="list-style-type: none"> <li>• Began as one half-day,</li> <li>• Now two half days/week</li> </ul>	<ul style="list-style-type: none"> <li>• One half-day/week</li> </ul>	<ul style="list-style-type: none"> <li>• One day/week (10:30 – ~5:00)</li> </ul>
Volume (2011)	<ul style="list-style-type: none"> <li>• No data available</li> </ul>	<ul style="list-style-type: none"> <li>• Approximately 100 new cases, 300 appearances</li> </ul>	<ul style="list-style-type: none"> <li>• 232</li> </ul>
Venue	<ul style="list-style-type: none"> <li>• Started in Trial Court</li> <li>• Moved to Pre-trial Court ~2003, resulting in much improved logistics, reduced drain on escort officers and clients, less disruption to other court processes</li> </ul>	<ul style="list-style-type: none"> <li>• Sentencing Court</li> </ul>	<ul style="list-style-type: none"> <li>• Trial Court</li> </ul>

*\* ~ Indicates dates or numbers are approximate*



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FEATURE	PEEL	NEWMARKET COMMUNITY TREATMENT COURT	REGION OF WATERLOO MENTAL HEALTH COURT
Staffing	<ul style="list-style-type: none"> <li>• Judges (~5-6)</li> <li>• Crown attorneys (~3-4)</li> <li>• Defense Counsel (~5)                             <ul style="list-style-type: none"> <li>• all of above on rotation</li> </ul> </li> <li>• CMHA Court Support staff (5)</li> </ul>	<ul style="list-style-type: none"> <li>• CMHA Court Support (7 staff)</li> <li>• Addiction Services York Region (1)</li> <li>• Crown (dedicated)</li> <li>• Judge (rotating)</li> <li>• Support staff from other agencies</li> <li>• Special constables</li> <li>• Police</li> </ul>	<ul style="list-style-type: none"> <li>• Youth Mental Health Worker</li> <li>• Court Coordinator (CMHA)</li> <li>• Support Coordinator (CMHA)</li> <li>• Bail Coordinator (CMHA)</li> <li>• Psychiatric Outreach Nurse (The Working Centre)</li> <li>• Dual Diagnosis Worker (CW Network of Specialized Care)</li> <li>• Duty Council (3)                             <ul style="list-style-type: none"> <li>• all senior</li> <li>• all have asked to be in MH court</li> <li>• 3 additional council assigned at random</li> </ul> </li> <li>• Judges (4)                             <ul style="list-style-type: none"> <li>• rotate on a regular basis.</li> <li>• all have chosen to be in MH court</li> </ul> </li> </ul>

FEATURE	PEEL	NEWMARKET COMMUNITY TREATMENT COURT	REGION OF WATERLOO MENTAL HEALTH COURT
Objectives	<ul style="list-style-type: none"> <li>• Currently engaged in consultations to establish formal statement of objectives</li> </ul>	<ul style="list-style-type: none"> <li>• No formal statement of objectives</li> </ul>	<ul style="list-style-type: none"> <li>• To deal with accused with mental disorders in an effective manner and in accordance with the <i>Mental Health Act</i> and the <i>Criminal Code of Canada</i></li> <li>• To hold accused accountable for the actions while providing effective treatment and/or support in the least restrictive fashion</li> <li>• To provide proper, as opposed to special, attention to accused persons with mental disorders</li> <li>• To protect both the rights of the public and the accused while at the same time maintaining the integrity of the criminal justice system</li> </ul>

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FEATURE	PEEL	NEWMARKET COMMUNITY TREATMENT COURT	REGION OF WATERLOO MENTAL HEALTH COURT
Eligibility	<ul style="list-style-type: none"> <li>• Any accused in which MH issues are apparent</li> <li>• Does not deal with addiction issues only</li> </ul>	<ul style="list-style-type: none"> <li>• Any accused in which MH issues are apparent</li> <li>• CD, ABI, dementia, DD</li> <li>• Does not deal with addiction issues only</li> </ul>	<ul style="list-style-type: none"> <li>• An identified mental disorder (including BPD) or symptoms of a mental disorder; and/or</li> <li>• A developmental delay; and/or</li> <li>• Another disorder such as an ABI, FASD, dementia, etc., AND</li> <li>• There is a nexus between the disorder and the alleged offense</li> <li>• <i>NOTES:</i> <ul style="list-style-type: none"> <li>○ accused with anti-social personality disorder, paraphilia or drug-induced psychosis are not eligible</li> <li>○ accused with CD are eligible if there is a connection between offense and mental disorder</li> <li>○ youth (under 18) accepted under exceptional circumstances only (generally referred to youth court)</li> </ul> </li> </ul>
Type of Offense	<ul style="list-style-type: none"> <li>• Class 1, 2 and 3 offenses (including murder)</li> <li>• First appearances excluded</li> </ul>	<ul style="list-style-type: none"> <li>• Class 1 and 2 offenses,</li> </ul>	<ul style="list-style-type: none"> <li>• Class 1, 2 and 3 offenses (including attempt murder)</li> </ul>

HALTON MENTAL HEALTH COURT PROJECT REPORT

FEATURE	PEEL	NEWMARKET COMMUNITY TREATMENT COURT	REGION OF WATERLOO MENTAL HEALTH COURT
Processes	<ul style="list-style-type: none"> <li>• Diversion</li> <li>• <i>Mental Health Act</i> orders</li> <li>• Bail release orders (as time permits)</li> <li>• Crown pre-trials</li> <li>• Judicial pre-trials</li> <li>• Fitness hearings</li> <li>• NCR hearings</li> <li>• Other <i>Criminal Code</i> s. 672 hearings</li> </ul>	<ul style="list-style-type: none"> <li>• Diversion</li> <li>• <i>Mental Health Act</i> orders (rarely)</li> <li>• Bail release orders</li> <li>• Crown pre-trials (occasionally)</li> <li>• Judicial pre-trials (occasionally)</li> <li>• Fitness hearings (occasionally)</li> <li>• NCR hearings (rarely)</li> <li>• Other <i>Criminal Code</i> s. 672 hearings</li> <li>• Guilty pleas (occasionally)</li> </ul>	<ul style="list-style-type: none"> <li>• Diversion</li> <li>• <i>Mental Health Act</i> orders</li> <li>• Bail release orders</li> <li>• Crown pre-trials</li> <li>• Judicial pre-trials</li> <li>• Fitness hearings</li> <li>• NCR hearings</li> <li>• Other <i>Criminal Code</i> s. 672 hearings</li> <li>• Guilty pleas</li> <li>• Trials/preliminary inquiries under 3 hours in length</li> <li>• Exclusions:               <ul style="list-style-type: none"> <li>○ contested bail hearings</li> <li>○ trial or preliminary inquiries over 3 hours (heard in regular court by a MH Court justice)</li> <li>○ matters subject to <i>Crown Policy memoranda and Directives</i> (e.g. domestic violence, firearms policies)</li> </ul> </li> </ul>

**HALTON MENTAL HEALTH COURT PROJECT REPORT**

FEATURE	PEEL	NEWMARKET COMMUNITY TREATMENT COURT	REGION OF WATERLOO MENTAL HEALTH COURT
<p>Assessments/ Other Psychiatric Services Provided</p>	<ul style="list-style-type: none"> <li>• Psychiatric services provided through arrangement with the Centre for Addiction and Mental Health</li> </ul>	<ul style="list-style-type: none"> <li>• No psychiatrist present in court</li> <li>• No funding for psychiatric services</li> <li>• Accused is remanded to Ontario Shores or Penetanguishine for assessment</li> <li>• Issues encountered:                             <ul style="list-style-type: none"> <li>○ 2 week wait list</li> <li>○ long commute between court and facility is stressful for accused</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Services provided by Grand River Hospital (through special funding from MOHLTC 2010)</li> <li>• Psychiatric consults on 10% of cases</li> <li>• Assessments conducted:                             <ul style="list-style-type: none"> <li>○ Fitness</li> <li>○ Form 1</li> <li>○ Pre-sentence</li> <li>○ Assessments to assist with community supervision (incl. advice to FP)</li> <li>○ Suitability for diversion</li> <li>○ NCR (preliminary opinion re: whether a full assessment would be suitable)</li> <li>○ Risk – to assist with sentencing</li> </ul> </li> <li>• Prior to funding allocation, sent accused to Grand River Hospital on Form 1 or waited for bed at psychiatric hospital</li> <li>• Court ordered assessments are paid for by the court</li> </ul>

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FEATURE	PEEL	NEWMARKET COMMUNITY TREATMENT COURT	REGION OF WATERLOO MENTAL HEALTH COURT
Special Features	<ul style="list-style-type: none"> <li>• CMHA Court Support program includes:                             <ul style="list-style-type: none"> <li>• Short term (&lt; 1 year) case management component</li> <li>• Education re: court processes for accused, service providers, families, etc.</li> <li>• Information re: mental illness and community services for the criminal justice system</li> </ul> </li> <li>• Years of relationship-building has resulted in respectful working relationships, understanding and respect for each others' roles and obligations</li> </ul>	<ul style="list-style-type: none"> <li>• None noted</li> </ul>	<ul style="list-style-type: none"> <li>• Form 2/Bail Release:                             <ul style="list-style-type: none"> <li>• <b><i>Protocol between Crown Attorney's office, Waterloo Regional Police and Grand River Hospital</i></b></li> <li>• Accused can be released on bail to locked unit of hospital</li> <li>• Designed to prevent accused from spending long periods in custody where there is not a suitable release plan</li> <li>• Accused must consent, meet criteria for Form 2 under the <i>Mental Health Act</i>, and not be charged with extremely violent offense</li> <li>• Hospital may refuse to admit</li> <li>• Accused appears as necessary in MH court via audio connection</li> <li>• On discharge, hospital informs police, who re-arrest for anticipated breach of bail terms (without charge)</li> <li>• May be released to</li> </ul> </li> </ul>

			<p>community following return to Bail Court</p> <ul style="list-style-type: none"> <li>• Referral process:             <ul style="list-style-type: none"> <li>• Police – identify possible candidate – complete <b><i>assessment developed by HSJCC</i></b> – forms foundation of Crown brief or given to hospital if client is diverted</li> <li>• Other crowns may ID candidates and refer to MH Court Crown</li> <li>• Produced: <b><i>Mental Health, the Justice System and You: Understanding the process and the people that can help (2010), Kitchener Human Services and Justice Coordinating Committee</i></b></li> </ul> </li> </ul>
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*Items in bold italics are available on request*

## ISSUES

Key informants identified the following three issues as significant considerations in the development and operation of their courts:

**Defining eligibility criteria:** One of the courts studied deals with accused who present active fitness issues and who have potential for diversion. Discussions are currently underway to determine whether the court's scope should be expanded to include anyone with a mental health problem, who is charged with any type of offense – whether divertible or not.

**Obtaining timely fitness assessments:** This is perhaps the most challenging issue encountered by mental health courts. Although some courts are well resourced in this regard, with psychiatrists that conduct immediate assessments in an anteroom adjacent to the court, many struggle to find the necessary expertise and to fund it when they do. In the absence of an in-court psychiatrist, or ready access through a telemedicine link to an off-site physician, accused must be transported (often great distances, and after long delays) to a psychiatric hospital outside the region. This places considerable stress on the accused and results in repeated remands – often at considerable expense to the court.

**Frequent turnover of Crown Attorneys:** Each new Crown may introduce his or her own criteria for determining what types of offenses are dealt with by the court. In jurisdictions in which Crowns are frequently reassigned, that lack of stability can lead to significant inconsistency. In one of the courts studied, concern related to that issue has prompted the development of protocols to guide case selection. Interestingly, in courts with a 'dedicated' Crown who remains in the position for a number of years, the Crown learns a great deal about repeat offenders –sometimes to the frustration of the accused's Defense, for whom the current appearance may be the first contact.

## ADVICE

The following advice was provided by key informants with respect to the development and operation of mental health courts – in Halton and elsewhere:

### ***Vision, Values and Relationships***

- Stakeholders must 'get on the same page' with respect to the court's vision and values, and develop consensus about what it means to be 'non-adversarial'. To that end, Halton may wish to:
  - Develop a joint education program and orientation process for all players
  - Include a presentation on 'Therapeutic Jurisprudence' as part of that process



- Develop a formal Statement of Values and Principles to guide the court
- The success of the court depends on the players and the relationships among them – their ability to work collaboratively, in particular. The involvement of a committed Crown is especially critical.
- Collaboration and commitment notwithstanding, those who undertake the development of a Mental Health Court should expect that it will take time for everyone to understand each other and to respect the expertise and perspective of other professionals. For that reason, among others, continuity (of the players) is important.

### ***Hybrid vs. Single Focus Model***

One key informant felt strongly that hybrid drug/MH courts couldn't be successful since their fundamental purposes are incompatible, and their philosophical foundations are at odds with one another. Another felt that their 'hybrid' court worked quite well.

### ***Design and Structure***

- Mental health courts must be designed as local solutions to local problems. Consequently – there is no one 'right' structure.
- Just Do It! (i.e. create the court). It is not necessary to develop an elaborate infrastructure before hearing the first case. It is necessary, however, to develop protocols early on to ensure consistency, rather than relying on informal understandings that fall apart when staff change.
- Among the protocols to be developed, the following are the most urgent:
  - Eligibility criteria
  - Criteria for stay vs. withdrawal of charges
  - Guidelines for the number of times accused should be returned to court
- Collect data from the beginning - to inform the court's ongoing development
- Work toward a formal structure, including an oversight committee

### ***Resources***

- Key informants agreed that finding a psychiatrist would likely be a challenge. They noted that there are very few forensic specialists in the province, and speculated that fewer still would be prepared to travel to Halton, given that most live in downtown Toronto.
- Video remand (using the Ontario Telemedicine Network) may be an efficient alternative to having a psychiatrist present in court.
- All of those interviewed emphasized that the court should not be dependent on any one individual, and that other members of the judiciary (among others) should be encouraged to commit to the process.
- In the absence of new funding, any new development will require the re-assignment of existing resources – consequently, it is important that the Administrative Judge be supportive.

### ***Scheduling***

Ensuring that there is adequate time allowed for case conferencing and pre-trial matters was seen as critical, as was securing a time slot for court support staff to meet with the Crown's office and Duty Council.

## **SUMMARY**

Based on the research conducted for this report, this author has come to the following conclusions about the design and development of specialty courts:

### ***There is no 'right' time***

The three courts studied would never have been established if their founders had waited for the ideal circumstances or the precise configuration of conditions necessary to ensure their success. In the words of one key informant "Just Do It!"

### ***There is no 'ideal' model***

Courts must be designed and structured to meet the specific needs of their communities, and to capitalize on the resources available to them.

### ***Establish a solid foundation***

Notwithstanding the "Just Do It" approach, it is also important to establish a solid administrative foundation early in the process. Protocols and other working agreements should be developed shortly after the court's creation to facilitate operations and ensure consistency.

### ***Nurture collaboration***

Success is dependent on the ability of the players to work collaboratively, respect each other's expertise, and embrace a shared vision. Facilitated processes to develop that vision, joint learning events, and frequent opportunities for frank communication can help to nurture inter-professional collaboration.

### ***Record your history***

In the rush to implement new structures, we too often neglect to document their history. Beginning now – to keep careful records of the court's development, and to collect data related to its activity – will ensure that Halton and other jurisdictions are able to benefit from the experience.

### ***Learn from others***

Key informants were remarkably generous with their time and expertise. In all cases, they offered to provide additional information and advice to the Halton court in the

future. Despite the differences in the structure and operation of their courts, all of them have great deal to offer.

***Prepare to make adjustments***

No matter how carefully you plan, there will inevitably be circumstances that require that you make adjustments to the court's design and processes. Scheduling an operational review at the one-year mark will ensure that Halton is able to build on its experience and address any issues that have arisen in the early stages of development.

Respectfully Submitted

A handwritten signature in black ink, appearing to read 'Valerie Johnston', written in a cursive style.

Valerie Johnston