

Drug Treatment Court Feasibility Study:

An Opportunity for Hope

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Executive Summary

Drug Treatment Courts are intended for offenders with serious drug addictions who commit non-violent, drug-motivated offences. To identify innovative and effective mechanisms to help address the problem of drug-related crime and substance abuse, the Government of Newfoundland and Labrador conducted a feasibility study into the possibility of a Drug Treatment Court (DTC) in the province. The study was co-led by the Department of Justice and Public Safety (JPS) and the Department of Health and Community Services (HCS). The Minister of Justice and Public Safety appointed an Advisory Committee to oversee the completion of the feasibility study, with the support of a Working Group comprised of the private bar and officials from JPS and HCS. A list of persons and organizations represented on the Advisory Committee and the Working Group can be found at Appendix A.

The feasibility study examined a range of issues related to a DTC pilot in Newfoundland and Labrador, including:

- addictions treatment;
- community and health resources;
- partnerships among key players and service providers;
- housing supports;
- best practices;
- potential demand; and,
- resource requirements.

The completion of public and stakeholder consultations, as well as site visits to DTCs elsewhere in Canada, helped ensure various perspectives and experiences were considered.

The Advisory Committee concluded that a pilot DTC is feasible for St. John's, with support from Justice Canada under the Drug Treatment Court Funding Program (DTCFP). The Advisory Committee made 24 recommendations regarding the implementation of a DTC pilot, informed by available research, stakeholder input, and the experiences of other jurisdictions. An implementation committee representing key partners and service providers is recommended to establish a project timeline. Key work required for implementation of a pilot court includes securing necessary human and financial resources, developing policies and procedures for the pilot DTC court, and collaborating with partners and stakeholders.

Methodology

The information contained within this report was gathered from a number of different sources, including: a review of relevant literature pertaining to DTCs; the completion of a cross jurisdictional scan of federally-funded DTCs; and the completion of site visits to four DTCs in Canada, located in Whitehorse, Vancouver, Ottawa and Kentville. Consultations with Provincial Government officials and community stakeholders were conducted through targeted meetings. The general public was invited to send input via e-mail or through a questionnaire posted on a dedicated web page that included background information on DTCs. Regular consultation with and feedback from federal, provincial, and territorial officials helped inform this report.

Drug Treatment Court Funding Program

Funding for this feasibility study was provided by the federal government Drug Treatment Court Funding Program (DTCFP), which provides financial support via funding agreements for provinces with DTCs. The DTCFP currently has funding agreements for DTCs with seven provinces and two territories. Provinces that receive money from the DTCFP must use funds in accordance with the Policy Framework for the DTCFP, which is attached as Appendix B.

The current DTCFP was established in 2004 and is part of the Treatment Action Plan of the National Anti-Drug Strategy (Department of Justice, 2016). In December 2016 the Government of Canada announced a new updated drug strategy for Canada, the Canadian Drugs and Substances Strategy, that will replace the current National Anti-Drug Strategy. The new Strategy is described as a more balanced approach in that “It restores harm reduction as a core pillar of Canada’s drug policy, alongside prevention, treatment and enforcement and supports all pillars with a strong evidence base” (Government of Canada, 2016).

Theoretical Foundation and Background on Drug Treatment Courts

Therapeutic jurisprudence represents the theoretical foundation upon which problem-solving courts are based (Winick, 2002). This concept represents a growing movement within law that recognizes how legal and judicial practices can be reshaped to have therapeutic potential. These practices pertain to rules and procedures, as well as to different participants within the legal system, such as lawyers and judges. A DTC is an example of a problem-solving approach that utilizes a therapeutic jurisprudence framework, and in so doing, offers an alternative to the traditional criminal justice response by aiming to address the underlying problems that contribute to crime. The goal of therapeutic jurisprudence is to reduce recurring court involvement by focusing on rehabilitation. Over the past two decades, courts in Canada

have used such approaches focused on matters such as drug addiction, mental health issues and domestic violence. Therapeutic jurisprudence recognizes that judges can be important agents of change in problem solving courts through their interaction with the people who come before them (National Judicial Institute, 2011).

Figure 1 below provides a comparison of traditional and problem solving approaches for court processes, highlighting some key differences.

TRADITIONAL AND PROBLEM SOLVING APPROACHES: A COMPARISON⁷	
Traditional approach	Problem-solving approach
The goal is the resolution of the dispute	The goal is the resolution of the underlying problem
The focus is on a legal outcome	The focus is on a therapeutic outcome
Uses an adversarial process	Uses a collaborative process
Claim- or case-oriented	People-oriented
Rights-based	Interest- or needs-based
Emphasizes adjudication	Emphasizes post-adjudication, alternative dispute resolution
Interpretation and application of law	Interpretation and application of social science
Judge acts as an arbiter	Judge acts as a coach
Backward-looking	Forward-looking
Precedent-based	Planning-based
Few participants and stakeholders	Many participants and stakeholders
Individualistic	Interdependent
Legalistic	Commonsensical
Formal	Informal
Efficient	Effective
Success is measured by compliance	Success is measured by remediation of underlying problem

Figure 1. *Traditional and Problem Solving Approaches: A Comparison* (National Judicial Institute, 2011).

DTCs aim to reduce the health, social and economic costs of illicit substance abuse through an innovative partnership between the criminal justice system, drug addiction treatment services and social service providers. The first DTC in Canada was established in Toronto in 1998 and the second opened in Vancouver in 2001 (Department of Justice, 2016). DTCs merge treatment services for substance abuse and the criminal justice system in an effort to deal more effectively with offenders who have serious drug addictions. These courts differ from traditional courts in that they provide an alternative to incarceration, aiming to reduce the number of crimes committed to support drug dependency by offering:

- judicial supervision;
- comprehensive substance abuse treatment;
- random and frequent drug testing;
- incentives and sanctions;
- clinical case management; and
- linkages and referrals to support services (Department of Justice, 2016).

DTCs operate under the same legal framework that exists for adult criminal court proceedings. Subsection 720(2) of the *Criminal Code* permits sentencing of an offender to be delayed to allow the offender to attend an approved treatment program under the supervision of the court. A notable difference of DTCs as compared to traditional criminal courts is that the *Criminal Code* and the *Controlled Drugs and Substances Act* provides for exemptions from mandatory minimum sentencing provisions. Offenders are still held accountable for their actions through the court but the exemptions are available where a participant has successfully completed an approved treatment program (Department of Justice, 2015).

DTCs generally target adults who have been charged with non-violent *Criminal Code* offences, where there is an established nexus between the offence and a serious drug addiction, or adults who have been charged with non-violent offences under the *Controlled Drugs and Substances Act* (CDSA). The specific criteria established by the DTCFP Policy Framework defining the target offender population are reproduced in Figure 2.

Target Offender Population

- 1) Offender with a serious addiction to illicit use of scheduled drugs such as: methamphetamine, cocaine, heroin, or other opiates²; and
- 2) Offender who has been identified as a risk to reoffend for which a treatment plan has been developed that:
 - Matches services to an offender’s criminogenic needs and risk of recidivism;
 - Builds on the strengths and abilities of the offender; and
 - Seeks to minimize the adverse health and social consequences associated with drug use (e.g., lifestyle, health and social needs of the offender).

Figure 2. Target offender population (Policy Framework for the Drug Treatment Court Funding Program 2014).

The target offender population for DTCs also includes those with a serious addiction to illicit use of prescription drugs. Many DTCs in Canada share common elements related to offender eligibility to participate. Eligibility is generally based on confirmation of addiction and either commission of an offence under the *Controlled Drugs and Substances Act* or commission of a non-violent *Criminal Code* offence that is motivated by a drug addiction. In addition to a serious addiction, DTC participants may also have other issues including mental health concerns, inadequate housing, reliance on income assistance, and limited access to employment and educational opportunities. The majority of DTC court participants are assessed as medium to high risk to reoffend. Successful completion criteria vary among DTCs and while some consistent elements exist, completion criteria are reflective of the unique characteristics of each court. Common criteria for successful completion by an offender includes compliance with treatment components, proven periods of abstinence confirmed by urine drug screens, and recognition of pro-social activities (Department of Justice, 2014).

Health Implications of Substance Use

There are various harms associated with substance misuse and abuse, including negative impacts on: physical health; brain function; emotional health; work and social relationships; and finances. Harmful consequences can build up over time, and continued use, despite harmful consequences, can lead to substance use problems or an addiction. Long-term impacts can include permanent health damage, involvement with the criminal justice system, family break down, and even death by overdose (Centre for Addiction and Mental Health, n.d.).

The American Society of Addiction Medicine (ASAM) considers addiction as a primary chronic disease (Heire & Skinner, 2014). Herie & Skinner (2014) contemplate a “biopsychosocial plus” approach to addictions, a model that views addiction as a dimensional

problem consisting of biological, psychological, social, cultural and spiritual dimensions. These dimensions represent essential pathways by which to consider a comprehensive pathway toward recovery. This model also embraces a broad, comprehensive understanding of addictions that considers the socio-structural factors. These factors, such as the social determinants of health, can both impact risk and support resiliency in recovery of addictions.

The social determinants of health are recognized as the primary factors that shape the health of Canadians. “These factors are not medical treatments or lifestyle choices, but rather the living conditions that Canadians experience” (p. 8, Mikkonen & Raphael, 2010). The model utilized by Mikkonen & Raphael (2010) is useful in explaining what the social determinants of health are and how they can be applied to improve quality of life. The 14 social determinants of health cited in this model are identified in Figure 3.

Box 1.1 Social Determinants of Health

Among the variety of models of the social determinants of health that exist, the one developed at a York University Conference held in Toronto in 2002 has proven especially useful for understanding why some Canadians are healthier than others. The 14 social determinants of health in this model are:

Aboriginal status	gender
disability	housing
early life	income and income distribution
education	race
employment and working conditions	social exclusion
food insecurity	social safety net
health services	unemployment and job security

Each of these social determinants of health has been shown to have strong effects upon the health of Canadians. Their effects are actually much stronger than the ones associated with behaviours such as diet, physical activity, and even tobacco and excessive alcohol use.

Source: Raphael, D. (2009). *Social Determinants of Health: Canadian Perspectives*, 2nd edition. Toronto: Canadian Scholars’ Press.

Figure 3. Social Determinants of Health (Mikkonen & Raphael, 2010).

Understanding how the social determinants impact health, specifically substance use, can provide crucial guidance regarding treatment for substance abuse and the establishment of DTCs. Mikkonen and Raphael (2010) assert that one’s well-being is directly related to the health and social services received, as well as equitable access to factors such as housing, education and food. Mikkonen and Raphael (2010) argue that in most cases, these living conditions are not so much about choices that people make, but rather a reflection of the systems and communities in which people live, including interactions with health and social services.

Treatment for substance abuse is optimal when considered holistically along a spectrum of health and social services that involves working with all parts of these systems (National Treatment Strategy working Group, 2008). Furthermore, the National Treatment Strategy Working Group (2008) highlights the importance of co-ordination of a broad range of services and supports for those impacted by substance abuse that is best achieved through integration and communication within and between systems providing services and supports to a person with an addiction. Consideration of the social determinants of health can assist in identifying and addressing gaps in required services and barriers to accessing those services. DTCs, through strong case management, offer opportunities for linkages to be made within and across the health and social systems, thus enhancing a participant's chance for recovery.

As a social determinant of health, appropriate housing has been noted by other DTCs as critical to the success of DTC participants. While potential DTC participants may not necessarily require residential treatment, having secure housing provides a solid base upon which to embark upon treatment. Feedback from community consultations indicates that lack of suitable housing presents challenges for many recipients of substance abuse services. Some community stakeholders also suggested that a person's criminal justice involvement can add an additional layer of complexity to addressing housing needs. This highlights the importance of DTCs fostering strong collaborative relationships between those providing health and other social services and those providing housing services. Housing supports and services are provided through a variety of municipal, provincial and federal entities.

The Cost of Substance Abuse and the Cost of Crime in Canada

Substance abuse in Canada is often associated with high costs of service delivery in health and justice, as well as loss of productivity both at home and in the workplace (Rehn, Ballunas, Brochu, Fishcher, Gnam, Patra, Popova, Sarnocinska-Hart & Taylor, 2006). Rehn et al (2006) define these costs as "social" costs, which are derived from well-documented economic theories and assumptions. This study by Rehn et al (2006), one of the most recent reports available on the topic, looked at the annual cost of substance abuse in Canada for 2002 and estimated the social cost to be \$39.8 billion, or \$ 1,267 for every Canadian (see Figure 4). For the purposes of this study, substance abuse is considered in relation to illegal drugs, alcohol and tobacco. Tobacco accounted for \$17 billion of the total estimate (42.7%), while alcohol accounted for about \$14.6 billion (36.6%) and illegal drugs accounted for about \$8.2 billion (20.7%) (p.1, Rehn et al). The study was released in April 2006 and is the result of a federal-

provincial partnership in consultation with the Canadian Centre for Substance Abuse (Canadian Centre for Substance Abuse, 2017).

Another study, completed on behalf of the Mental Health Commission of Canada in 2011, cited the economic burden of mental illness, inclusive of a substance use disorder, to be \$51 billion per year. These costs included health care costs, lost productivity and health related quality of life costs but excluded criminal justice system costs (Smetanin, Stiff, Briante, Adair, Ahmad and Khan, 2011).

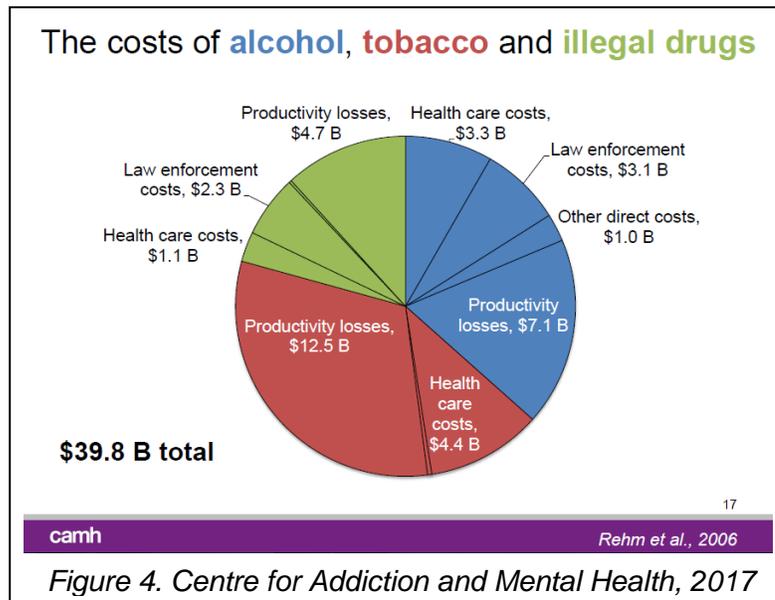


Figure 4. Centre for Addiction and Mental Health, 2017

In Newfoundland and Labrador, \$135.9 million was spent by the regional health authorities for mental health and addiction services in 2015-16 (All-Party Committee on Mental Health and Addictions, 2017). While this figure does not include private spending, it is clear that the public health care system spends significant funds in this area. If information regarding private spending on mental health and addictions services was included, the figure would be even higher.

A report by The Fraser Institute (Easton, Furness & Brantingham, 2014) estimated the cost of crime in Canada to be \$85.2 billion for a one-year period spanning 2009 and 2010. This includes direct justice costs for policing, courts and corrections as well as estimates for losses experienced by victims including crime prevention time costs, stolen and damaged property, lost productivity, business and direct medical costs and private and personal security costs (Easton, Furness & Brantingham, 2014).

While these studies do not make a direct link between the cost of substance use and criminal behavior, Public Safety Canada (2015) states that three out of four inmates come into Canada's federal correctional institutions with substance abuse problems, and that for approximately half of federal offenders there is a direct link between their substance abuse and crime (Public Safety Canada, 2015).

Cost Effectiveness of Drug Treatment Courts

As noted, the costs of substance abuse and crime in Canada are significant. As DTCs primarily target non-violent offenders who are considered medium to high risk to reoffend and who face potential incarceration, the cost of incarceration is often cited as an indicator of the cost effectiveness of DTCs. The cost of incarceration per inmate is currently \$291.41 per night per inmate, which equals \$106,364.65 per inmate per year (Department of Justice & Public Safety, Personal Communications, 2017). The cost per inmate varies based on changes in operating expenses such as staffing, maintenance, and catering as well as the number of inmates in custody.

The cost of supervising an inmate in the community is considerably less than the cost of incarcerating that inmate. A Corrections and Conditional Release Statistical Overview, 2015 Annual Report cited the cost associated with maintaining an offender in the community as \$34,432 per year (Public Safety Canada, 2015). The 2016 report was not available at the time of writing this report. This figure represents federal costs and no similar provincial data is available. The Drug Treatment Court funding Program Evaluation Final Report (2015) found that the potential cost savings realized by DTCs “ranged from 20% to 88% if incarceration was assumed” (p.vi). Higher costs may be incurred if the participant is not likely to be given a period of incarceration (Department of Justice Canada, 2015).

Drug Treatment Court Outcomes

The body of outcome research and literature related to DTC effectiveness is primarily derived from programs that operate in the United States, although some Canadian evidence exists. Overall consideration of the available research and literature shows promising results.

In 2006, Justice Canada commissioned a report to determine whether DTCs reduce recidivism. This meta-analysis conducted by Latimer, Morton-Bourgon & Chretien (2006) consisted of a review of 54 studies that included data on 66 individual DTCs. As noted above, DTC research primarily originates from the United States, however, this meta-analysis did include representation of two studies from Canada and two from Australia. The results of this analysis provided clear support for the use of DTCs, citing an overall 14% reduction in recidivism as compared to the offenders in the control/comparison group. This research did not include any analysis related to the cost effectiveness of DTCs. Additionally, this research found that services provided by DTCs, which range from one year to eighteen months, are also

associated with reductions in recidivism. This finding has implications for best practices in relation to DTC structure (Latimer et al., 2006).

Another review regarding DTCs was completed in 2009 by Guttierrez & Bourgon. This review examined two significant factors related to studies examining the effectiveness of DTCs: study quality and treatment quality. This review highlighted that there were few methodologically-sound studies by which to assess DTCs. Ninety-six studies were reviewed and of those that were considered methodologically acceptable, reduction in recidivism was found to be approximately 8 per cent. The authors of this report conclude that more methodically-sound research is needed to estimate the effectiveness of DTCs. This study also concluded that the effectiveness of DTCs can be improved by adhering to the principles of risk, need and responsivity, discussed later in this report (Guttierrez & Bourgon, 2009).

A more recent study undertook an empirical evaluation of recidivism at the Drug Treatment Court of Vancouver (DTCV). This study, by Somers, Currie, Moniruzzaman, Eiboff, & Patterson (2012), provides a Canadian context. This study compared a cohort design of DTCV participants and a comparison group consisting of matched group offenders. Data for this study was derived from non-identifying administrative data from three government ministries: Public Safety and Solicitor General; Health Services; and Social Development and included an inventory of the health, corrections and income assistance services utilized by residents of the province of British Columbia (Somers et al., 2012). This study considered the rates of offending for two years prior to entering the Vancouver DTC program and two years after program termination. The results of this study indicated that DTCV participants exhibited reduced overall offending, and in particular, a significant reduction in drug related offences than the matched comparison group. This study also noted a decrease of over 50% in the number of unique DTC participants sentenced for drug related offences in the two year period following their involvement with the DTCV. There was no significant reduction in drug related offending for the matched comparison group (Somers et al., 2012). The results of this study did not address the relative effectiveness of the individual program elements of the Vancouver DTC and suggested that future research should focus on specific practices that maximize benefits to participants (Somers et al., 2012).

DTCs are not without their challenges and criticisms. Kirkby (2004) writing about DTCs suggested that the same benefits of a DTC could be achieved by enhancing access to voluntary treatment through additional investments in health programs, focusing on substance abuse as a health issue as opposed a justice issue. Kirkby (2004) also cites concerns about cost

effectiveness of DTCs, and discusses a larger public policy debate regarding legalization and decriminalization as it relates to harms from illicit drugs.

Choice and access are also debated in DTC literature, with questions raised about whether or not DTCs infringe on basic human rights. Some express concerns that DTCs do not really offer choice or support personal autonomy when dealing with addictions (Allard, Lyons & Elliott, 2011). A common criticism is that some DTC participants may choose to go through the DTC because of the possibility of a reduced sentence and not because participants are truly motivated to deal with their addictions. Another criticism is that participants who go through DTC might be able to access services faster and ahead of the general public who may be waitlisted for services. Equitable and timely access to health and social services are seen as major determinants for good health. Allard et al., (2011) also suggest that DTC evaluations have been inconclusive regarding success of those courts in helping offenders deal with their addictions.

This body of research provides useful information on outcomes and best practices related to DTCs and, on balance, the research suggests that DTCs can be effective. The criticisms contained in the research highlight potential opportunities to improve the functioning of DTCs. Drawing on all insight available in the literature would be important for any jurisdiction aiming to establish a DTC.

Drug Treatment Court Funding Program (DTCFP) Data

Review of DTCFP data indicates that “since 2007, over 1000 individuals have participated in a federally-funded DTC. Of these, 35% have either graduated or are still in the program. Of the remaining 65% that were returned to the regular court system, the majority of them had achieved some quality of life improvements (e.g., no longer homeless, received several months of addiction treatment and were connected to social supports within the community)” (Department of Justice, Canada, 2016).

The DTCFP requires that federally-funded DTCs maintain data on two key performances indicators:

1. Percentage of participants retained for six months in federally-funded DTCs; and
2. Percentage of DTC participants receiving a clear drug screening result.

The DTCFP sets a performance indicator target of 25% for participants to remain in the program for six months or more. For the period April 1, 2015, to June 30, 2016, this target was exceeded with 63% of DTC participants remaining in the program for 6 months or more. For the second performance indicator, the target is for 50% of participants to receive a clear drug

screening result. Based on the same time period, this target was exceeded with 64% of DTC participants receiving such a result (Drug Treatment Court Funding Program, Personal Communications, 2017).

Drug Treatment Courts in Canada – Models and Site Visits

To inform this feasibility study, site visits were conducted to four federally-funded DTCs in Canada, located in Whitehorse, Vancouver, Ottawa and Kentville. These four courts represented a cross-section of different DTC models, each of which has both common elements and distinct characteristics. Additionally, a jurisdictional scan of other DTCs in Canada added insight into the various models that exist and best practices for these courts. In addition to the above sites, DTCs that receive federal funding also operate in the Northwest Territories, Alberta, Saskatchewan, Manitoba and Quebec.

Information acquired from the four site visits is summarized below. Additional details can be found at Appendix C.

Yukon Community Wellness Court (CWC)	
Staff/Key Players	<ul style="list-style-type: none"> ▪ Probation Officer/Case Manager ▪ Public Prosecution Services Canada ▪ Defense Counsel ▪ Council of Yukon First Nations ▪ Victim Services ▪ Therapeutic Courts Coordinator ▪ Dedicated Judge
Participant Eligibility Requirements	<ul style="list-style-type: none"> ▪ Must have outstanding <i>Criminal Code</i> charge or <i>Controlled Drugs and Substances Act</i> charge ▪ Must have an addiction to alcohol or drugs and established connection between the addiction and the offence ▪ Must have a mental health problem and/or an intellectual disability
Treatment Model	<ul style="list-style-type: none"> ▪ Individual wellness plan comprised of therapeutic supports
Judicial Supervision	<ul style="list-style-type: none"> ▪ Released on CWC Undertaking ▪ Supervised by Probation Officer
Other	<ul style="list-style-type: none"> ▪ Random urine drug screening
Target Capacity	<ul style="list-style-type: none"> ▪ 10-20 participants

Vancouver Drug Treatment Court	
Staff/Key Players	<p>Drug Court Treatment and Resource Centre Staff:</p> <ul style="list-style-type: none"> ▪ Psychologist ▪ Addictions Counsellors ▪ Medical Staff (Nurse/Doctor) ▪ Probation Officers ▪ Clinical Case Manager ▪ Employment Assistance Worker <p>Other key players:</p> <ul style="list-style-type: none"> ▪ Federal or Provincial Crown Prosecutors ▪ Defense Counsel/Legal Aid ▪ Dedicated Judge
Participant Eligibility Requirements	<ul style="list-style-type: none"> ▪ Must have a drug addiction ▪ Must be charged with non-violent <i>Criminal Code</i> offence or <i>Controlled Drugs and Substances Act</i> offence ▪ Must have established nexus between criminal offence and addiction ▪ Cannot be serving a sentence or have outstanding violent offence charges ▪ Cannot be a member of a gang ▪ Cannot be a former DTC graduate
Treatment Model	<ul style="list-style-type: none"> ▪ Drug Court Treatment and Resource Centre ▪ Treatment provider is Vancouver Coastal Health regional health authority ▪ Four phased treatment program which includes individual and group counseling ▪ Collaboration with other community organizations
Judicial Supervision	<ul style="list-style-type: none"> ▪ Released on DTC bail release conditions ▪ Supervised by probation officer
Other	<ul style="list-style-type: none"> ▪ Random urine drug screening
Target Capacity	<ul style="list-style-type: none"> ▪ 90 participants

Ottawa Treatment Court	
DTC Staff/Key Players	<ul style="list-style-type: none"> ▪ Rideauwood Addictions and Family Services ▪ Federal and Provincial Crown Prosecutors ▪ Defense Counsel/Duty Counsel ▪ Drug Treatment Court Coordinator ▪ Probation Officer ▪ Dedicated Judge
Eligibility Requirements	<ul style="list-style-type: none"> ▪ Must have a drug addiction ▪ Must be charged with non-violent <i>Criminal Code</i> offence or <i>Controlled Drugs and Substances Act</i> offence ▪ Must have established nexus between the offence and addiction
Treatment Model	<ul style="list-style-type: none"> ▪ Intensive treatment provided by Rideauwood Addictions and Family Services
Judicial Supervision	<ul style="list-style-type: none"> ▪ Released on DTC judicial interim release and supervised by DTC team and treatment provider
Other	<ul style="list-style-type: none"> ▪ Random urine drug screening
Target Capacity	<ul style="list-style-type: none"> ▪ 25-35 participants

Kentville Court Monitored Drug Treatment Program	
DTC Staff/Key Players	<ul style="list-style-type: none"> ▪ Program Coordinator/Addictions Counsellor ▪ Federal and Provincial Crown Prosecutors ▪ Legal Aid ▪ Court Administrator ▪ Probation Officer ▪ Dedicated Judge
Eligibility Requirements	<ul style="list-style-type: none"> ▪ Must have a drug addiction ▪ Must be charged with non-violent <i>Criminal Code</i> offence or <i>Controlled Drugs and Substances Act</i> offence ▪ Must have established nexus between the offence and addiction
Treatment Model	<ul style="list-style-type: none"> ▪ Program coordinator is a health authority employee ▪ Client-centred services model ▪ Individualized treatment plans
Judicial Supervision	<ul style="list-style-type: none"> ▪ No DTC undertaking. Existing undertaking or court orders remain in place ▪ Program Coordinator reports back to pre-court team on progress. ▪ Decisions made jointly by the team regarding rewards/sanctions
Other	<ul style="list-style-type: none"> ▪ Random urine drug screening
Target Capacity	<ul style="list-style-type: none"> ▪ 12 participants, although no formal target set

Drug Treatment Court Best Practices

A number of best practices have emerged from both the literature and from the review of DTCs across the country. These best practices include:

- consistency of the presiding Judge;
- consistency of Crown prosecutor and defense counsel noted as important;
- a Crown prosecutor veto regarding admission to a DTC as it relates to public safety and the proper administration of justice;
- adherence to principles of Risk-Need-Responsivity Model (discussed later in this report);
- the use of approaches that emphasize harm reduction;
- a dedicated court that monitors the DTC participant's compliance and progress;
- the provision of appropriate treatment services and case management to assist the DTC participant in optimum recovery; and
- community support through referrals to social services (such as housing and employment services) that can help stabilize and support the offender in making treatment progress and in complying with the conditions of the DTC.

While a long term commitment to abstinence from drug use is required of DTC participants, many programs incorporate a harm reduction philosophy that recognizes the inevitability of some relapses during treatment. Harm reduction is acknowledged as an approach that aims “to minimize risks and harms associated with substance use and related behaviors (e.g., sharing needles and other drug paraphernalia, unsafe sexual practices), and reaches out to encourage engagement in services and supports without requiring an immediate commitment to abstinence. Abstinence may, however, remain a longer-term goal for many people” (p. 36, National Treatment Strategy working Group, 2008). Utilizing a harm reduction approach for DTCs involves an intersection of values and requires a careful balancing of public protection and the facilitation of offender rehabilitation as offenders move towards abstinence.

Drug-Related Crime in Newfoundland and Labrador and Data Trends for Substance Use Treatment Services

Recent statistics indicate that rates for drug offences are increasing in Newfoundland and Labrador. The Statistics Canada report on police reported crime statistics in Canada, 2015, reported that the rate of cocaine-related crime has been declining in recent years on average in Canada but has increased in Newfoundland and Labrador by 4 per cent. Drug offences related to cocaine were the second most common type of drug crime in 2015 (Statistics Canada, 2016). The report further indicates that rates of police-reported crime related to other drug offences (non-cannabis/non-cocaine) showed a national increase of 14% in 2015, with the increase in Newfoundland and Labrador noted at 11 per cent.

Consultations with the Royal Newfoundland Constabulary (RNC) and the Royal Canadian Mounted Police (RCMP) confirmed the problematic nature of drug use in the Province and that addressing this remains a priority for both police forces.

As noted above, Public Safety Canada (2015) indicates that three out of four inmates come into Canada's federal correctional institutions with substance abuse problems and that there is a direct link between their substance abuse and crime for approximately half of federal offenders (Public Safety Canada, 2015). Similar provincial data is not available.

Consultations were conducted with the Newfoundland and Labrador Legal Aid Commission, Public Prosecutions Division of the Provincial Government, and the St. John's office of the Public Prosecutions Service of Canada to ascertain the size of the pool of potential DTC referrals. The Legal Aid Commission and the Public Prosecutions Division undertook a separate scan of new files proceeding through first appearance court in St. John's over a different five-day period. Utilizing the target offender criteria set out by the DTC Funding Program Policy Framework as a guide, the number of potential referrals for a DTC during the selected periods was identified.

The results of the scan completed by the Legal Aid Commission included consideration of 131 separate files, of which 14% (or 18 files) appeared to meet the criteria and represented potential DTC referrals.

The results of the scan completed by the Public Prosecutions Division included consideration of 80 separate files of which 5% (or four files) appeared to meet the criteria and represented potential DTC referrals.

A conservative estimate from the Public Prosecutions Services of Canada (St. John's office) upon a review of 20 recently open files indicated that 10% (or two files) were potential referrals to a DTC.

It is important to note that the actual number of potential referrals could differ, as much of the required information to consider a referral for a DTC is not known from a preliminary file scan and would require much more detailed information. However, this file review gives positive indication of the likely existence of a potential pool of DTC referrals.

The Adult Probation Division of the Department of Justice and Public Safety is responsible for the supervision of court-imposed community-based sentences including probation and conditional sentence orders. Data that links the number of individuals with substance abuse issues serving a sentence including probation or a conditional sentence is not available. In fall 2016, the Division conducted a two week scan of new community based sentences that included conditional sentence orders and probation orders. During that two week period, there were 57 new orders, of which 34 contained a condition to attend counseling as directed by a probation officer specifically for substance abuse or addictions issues. This equates to almost 60% of these orders.

Another source of data considered was the *National Treatment Indicators Report (2013-2014 Data)* compiled by the Canadian Centre on Substance Abuse (2016). The report looks at trends in data relating to individuals accessing substance use treatment services across Canada. A limitation of this report is that it captures data from publicly-funded treatment services only. This report provided the following data for Newfoundland and Labrador:

- *In 2013–2014, 2,612 unique individuals accessed publicly funded substance use treatment services in Newfoundland and Labrador, of which 79.2% were new cases (2,069). In total, these 2,612 individuals accounted for 4,099 episodes (Canadian Centre on Substance Abuse. p. 43).*

The above number represents an increase in overall treatment service use in Newfoundland and Labrador of approximately 40% since 2010-2011, in which 2,938 episodes were reported, compared to the 4,099 for 2013-2014 period (Canadian Centre on Substance Abuse, 2016).

It is difficult to determine the precise number of individuals who would utilize a DTC as there is no provincially available data linking substance abuse with involvement in the criminal justice system. However, a common theme has emerged from stakeholders consulted in the course of this study: the remarkable presence of offenders in the criminal justice system who have an addiction and whose addiction is understood to be connected to the commission of

their criminal offences. While not definitive, the data obtained from the Legal Aid Commission, Public Prosecutions (federal and provincial) and Adult Probation Division strongly suggests the existence of potential referrals to a DTC and is consistent with information gained from consultations with key stakeholders and community agencies.

Overview of Mental Health and Addictions Services in Newfoundland and Labrador

Services for mental health and addictions in Newfoundland and Labrador are offered through a comprehensive network of service providers; including regional health authorities (RHAs) and community organizations. There are also private mental health and addictions services available.

The four RHAs in the Province (Eastern Health, Central Health, Western Health and Labrador-Grenfell Health) provide a wide range of services, including direct client services for individuals who experience mental health and addictions challenges. These services are provided by social workers, nurses, psychologists, physicians and other health professionals. They include access to a range of services, such as outpatient counseling; adult residential treatment services; detoxification services; opioid dependence treatment and crisis support. There is considerable demand for addictions services in Newfoundland and Labrador and in many parts of the province wait lists exist (Department of Health and Community Services, 2016).

In March 2017, Eastern Health announced the “DoorWays” program, a walk-in service for individuals to receive help from health care professionals including: psychologists; nurses; social workers and addictions counsellors. This initiative is intended to address accessibility to services and unique client needs (Eastern Health, 2017).

There is also a broad range of community services that provide a blend of educational, preventative, recovery oriented, self-help, peer support, employment assistance and housing support, all of which combine to provide a comprehensive continuum of care.

Like other parts of Canada, Newfoundland and Labrador continues to strive towards improving services for those dealing with addictions, focusing on harm reduction and improvements in prevention and treatment. The Canadian Community Epidemiology Network on Drug Use (2015) reports that “there were 655 deaths in Canada between 2009 and 2014 where fentanyl was determined to be a cause or contributing cause”. In response to an upward trend

in overdoses and deaths across the country as a result of the growing opioid crisis which includes fentanyl, the Provincial Government is advancing initiatives under the Provincial Opioid Action Plan. Among others, these initiatives include: the take-home naloxone program; increased access to effective treatment options, including suboxone as an alternative to methadone for people undergoing addictions treatment; development of a province wide Prescription Monitoring Program; and development of a public awareness and education program on opioids (Department of Health and Community Services, 2016).

The All Party Committee on Mental Health and Addictions (2017) reviewed the provincial mental health and addictions system, and in March 2017, released its report titled: Towards Recovery: A Vision for a Renewed Mental Health and Addictions System for Newfoundland and Labrador. An overarching theme of this report is the implementation of an “integrated, person-centered and recovery-focused system that provides the right care, at the right time and in the right place” (p.15, All Party Committee on Mental Health and Addictions, 2017). A recovery focused system recognizes that collaboration between health care providers, community agencies and those with lived experience is crucial.

The overarching theme of collaboration as a best practice in addictions treatment recognizes that individuals benefit most when there is a holistic approach to a person’s needs. Programs that utilize a holistic approach are comprehensive and responsive to the unique needs of individuals, including health services and other social services. DTCs recognize the importance of partnerships and collaboration between services to enhance recovery.

The Department of Health and Community Services, 2016 (HCS), which has an overarching role in the provision of leadership, coordination and support in the delivery of health services, recognizes collaboration as a key departmental value (Department of Health and Community Services, 2016). Indeed, this feasibility study is the result of significant collaboration and partnership between the Department of Health and Community Services and the Department of Justice and Public Safety.

Urine Drug Screens

Urine drug screens are recognized as a common component of DTCs. Consultations with other DTCS have identified that urine drug screens are an essential aspect of a participant’s treatment plan, playing an important role in judicial supervision. Urine drug screens have also been noted through the consultation process as having a role in the therapeutic relationship with participants as they can facilitate discussions around treatment progress. It is

also important to note that a positive urine drug screen does not mean automatic dismissal of a participant from a DTC program as it is recognized that relapses can happen. The validity and reliability of urine drug screens is identified as critical, given that they are utilized as a monitoring tool and one which can influence decisions regarding DTC participation.

Consultation with health partners has confirmed that the Urine Drug Screen 42 (UDS 42) is the common tool that is used. The standard for drug screen testing across Canada for DTCs includes testing for methamphetamine, cocaine, heroin, and other opiates (Department of Justice, 2015). The UDS 42 has been confirmed with the Department of Health and Community Services (Personal Communications, 2017) as testing for the above noted drugs and the cost is estimated to be less than five dollars per sample.

Services for Offenders with Addictions in Newfoundland and Labrador

The Adult Custody Division of the Department of Justice and Public Safety operates five custodial facilities in Newfoundland and Labrador. These facilities include: Her Majesty's Penitentiary, Newfoundland and Labrador Correctional Center for Women, Bishop's Falls Correctional Centre, West Coast Correctional Centre and the Labrador Correctional Centre. A variety of programming and case management services are available at each of these facilities, including addiction services. All of the facilities generally operate at full capacity regarding general operations and program delivery. Her Majesty's Penitentiary has a full-time Addictions Coordinator who works collaboratively with other groups to provide addiction services to inmates. There is a wait list for the services of the Addictions Coordinator at Her Majesty's Penitentiary.

The Adult Probation Division has 12 office locations across the Province and is responsible for supervision of court-imposed community-based sentences. Both the Adult Custody Division and Adult Probation Division work with many community partners to provide a range of services to adult offenders with addictions in the Province. These community partnerships are integral and valued relationships that enhance support and offender programming with the goal of rehabilitation.

Consultation with both divisions indicate that there is consistent uptake in addictions services that are available and that self-reporting of addictions among offenders is increasing, as is the use of opioids. In addition, some inmates report the need for more intensive services to help them deal with their addictions (Department of Justice & Public Safety, Personal Communications (2017).

Value of Collaboration: Resource Considerations

Most DTCs operate within a dedicated court, therefore, it is important to consider current court infrastructure with regard to the ability to support therapeutic courts. Consideration must also be given to human resource costs including administrative support to operate such courts. Provincial Courts that have more than one court room and multiple judges offer greater capacity to run specialty courts. The Province currently operates two specialized therapeutic or problem solving courts including a Mental Health Court and a Family Violence Intervention Court, both in St. John's. A pilot project of the Family Violence Intervention court is operating in Stephenville. There is a permanent Specialty Court Liaison Position attached to these therapeutic courts that offers key administrative and oversight support.

Resource considerations of other key players, including Public Prosecution Service of Canada (PPSC), Public Prosecutions Division and the Legal Aid Commission also need to be considered. Consultations with these entities indicate that the optimal areas for those entities to support the operations of a DTC are those areas where there are already multiple staff resources and specifically in areas where specialty courts currently exist. PPSC has responsibility for prosecution of charges under the *Controlled Drugs and Substances Act* and utilizes contract services for court jurisdictions across the Province, with the exception of St. John's. The main office for PPSC is located in St. John's and it has been noted as preferable that in-house counsel assume DTC responsibilities. Public Prosecutions Division and the Legal Aid Commission also have a significant portion of their staff resources available in St. John's.

Another critical component of a DTC is judicial supervision of offenders. Judicial supervision refers to the overall monitoring of a DTC participant by a court. This is integral to public safety. In some provinces, probation officers are responsible for judicial supervision of DTC participants and in other provinces supervision is provided by DTC teams. Considering human resource requirements, it has been determined that Adult Corrections would require an additional resource to supervise DTC participants.

This feasibility study did undertake to consider court infrastructure to determine if a DTC could operate alongside an already existing mental health court. Collaboration amongst justice and health and community partners has been noted as a best practice for DTCs (Department of Justice Canada, 2015). All federally funded DTCs primarily operate according to the guidance of multi-disciplinary teams. These teams consist of multiple stakeholders including: Crown prosecutors; legal aid; defense counsel; judge, treatment staff; adult probation and court administration staff. The Mental Health Court in St. John's has been in operation since January

2005. This court operates similarly to DTCs, in that, participants who have a diagnosed mental illness and a demonstrated nexus between their illness and criminal behavior can participate. The Mental Health Court is a project of the Newfoundland and Labrador Legal Aid Commission, Eastern Health and Corrections and Community Services (Department of Justice and Public Safety, 2017). Participants of this court proceed through the regular court process however, sentencing is delayed pending participation in a recognized treatment program that includes medical and community support provided by health care professionals and corrections personnel. Consultation with the Mental Health Court team has identified that there is some capacity to utilize existing services that are a core part of the Mental Health Court. Specifically, both the Public Prosecutions Division and Legal Aid Commission staff resources attached to the Mental Health Court have expressed that there is opportunity to absorb additional duties should a DTC be established. This support has been expressed within the context of the current structure that already exists for the Mental Health Court which is an already established court team, with solid structure and a dedicated court time. The ability to take advantage of the expertise that already exists within the Mental Health Court is recognized as an advantage in the consideration of the establishment of a DTC for Newfoundland and Labrador. The treatment component of the Mental Health Court is operated under the auspices of Eastern Health and capacity concerns have been identified in relation to additional uptake on these services should a DTC be implemented.

Consultation with the Victim Services program has also occurred, and it is noted that adherence to the Canadian Victims Bill of Rights (CVBR) (2015) should be an integral component of DTC operations. The CVBR solidifies the importance of the rights of victims within the criminal justice system including the rights of participation and protection and the rights to seek restitution, receive information and make a complaint (Government of Canada, 2015).

In considering the feasibility of establishing a DTC in Newfoundland and Labrador, it is essential to be mindful of best practices from research, from other DTCs and from those with lived experience. DTCs must implement innovative approaches to dealing with offenders in a balanced way that ensures respect for the integrity of the criminal justice process.

Treatment Consideration Recommendations

Individualized treatment plans that target the unique needs of individuals, matching the intensity of treatment to problem severity are considered key treatment components (Herie, Skinner & Maté, 2014). The Department of Health and Community Services (2015) has identified provincial addictions treatment standards which focus on delivering a range of

services and supports to address risks and harm associated with substance abuse. These standards provide clear direction for addictions treatment with regard to ethical practice, cultural competence, client centred care, family caregiver involvement, harm reduction approach, screening and assessment, goals for treatment, evidence based practice, trauma informed practice and aftercare (Department of Health and Community Services, 2015).

Best practices in DTC literature suggest adherence to the Risk-Need-Responsivity (RNR) model. This model, first formalized in 1990 by Andrews, Bonta and Hoge (Public Safety Canada, 2015) has been utilized around the world and in Canada as a model for best practice in the rehabilitation of criminals. The RNR model has been shown to have increasing success in rehabilitation and has three core principles:

- **Risk Principle:** Match the level of services to the offender's risk to re-offend;
- **Need Principle:** Assess criminogenic needs and target them in treatment; and
- **Responsivity principle:** Maximize the offender's ability to learn from a rehabilitative intervention by providing cognitive behavioral treatment and tailoring the intervention to the learning style, motivation, abilities and strengths of the offender (Public Safety Canada, 2015).

Other literature supports the use of the theory of Risk-Need- Responsivity (RNR) as best utilized as a guiding theoretical framework when considering the programming component of DTCs. Adherence to principles of RNR has been shown to be associated with more significant reductions in recidivism. RNR promotes correctional programming that match offender characteristics to treatment programs (Somers, Currie, Moniruzzaman, Eboff & Pattersons, 2012). As well, one report suggests that correctional programs that adhere to the RNR model show reductions in offender recidivism by up to 35% (Andrew & Bonta, 2010). A recommendation from the 2015 Drug Treatment Court Funding Program Evaluation Final Report (2015) suggested that DTCs make greater use of the RNR model as studies have shown that full adherence to the three core principles as noted above showed the greatest reduction in recidivism.

Building on the acceptance of recognized standards for treatment and the importance of recovery oriented practice, it is important to consider diversity as it relates to DTCs. DTCs must have the ability to provide services that are sensitive and respectful of cultural diversities, gender influences, age, sexual orientation, and ethnicity (Herie & Skinner & Maté, 2014).

Culturally competent practice embraces learning about a person's cultural history, values and beliefs thus fostering treatment and supports that best meet individual needs.

Incorporating an Indigenous understanding of wellness, respectful of distinct cultural differences will be necessary. This should involve strengthening collaboration with Indigenous partners and organizations to ensure the provision of culturally responsive services and culturally safe practices for Indigenous peoples.

Applying a gender based analysis will also ensure recognition and appreciation of diversity among women as DTC participants. Ensuring equitable access to services requires acknowledgement that all life experiences must be considered in relation to service delivery and that there are many intersecting influences that impact health.

Legislative Considerations

There have been two potential legislative considerations that have been identified as requiring review as it relates to the potential establishment of a DTC. One of the cornerstones of a DTC is the court's ability to ensure that participants are compliant with the terms and conditions of the undertaking upon which they were released. This is usually done in other DTCs through urine drug screening. Newfoundland and Labrador has not enacted legislation that permits courts to authorize urine drug screening and this is identified as a legislative consideration requiring review.

If this Province moves forward with a DTC, then the issue of bail supervision as a legislative consideration will have to be addressed.

Consultations: What We Heard

As part of the feasibility study, a number of meetings with various community groups and government departments took place (See Appendix D). These consultations provided an opportunity to share information on how federally funded DTCs operate and to receive feedback regarding the potential implementation of a DTC for Newfoundland and Labrador. A number of emerging themes were evident based on these meetings. Below is a summary of the feedback received through the consultations:

- All those consulted believed that there is a significant substance abuse problem in Newfoundland and Labrador;
- The majority of people agreed that there was a need for a DTC;
- Caution was expressed that in addition to mental health and addictions services, other ancillary services should be available, including housing;
- The majority of organizations providing services to those who experience substance abuse expressed willingness to support and partner with a DTC, although caution was

expressed that existing services are already stressed because of demand from individuals seeking treatment for substance abuse. There was recognition however, that potential applicants for a DTC may already be receiving some of these existing services, therefore DTC participants would not necessarily represent new clients;

- If a DTC is implemented, the accompanying services must address the unique needs of individuals and be both culturally sensitive and appropriate;
- Education was identified as crucial to ensure public understanding about how DTCs operate;
- Caution was expressed about the province absorbing additional expenditures in an already difficult financial situation;
- Some people expressed that those with addictions to alcohol should be accepted into the DTC;
- Caution was expressed about setting up a DTC prematurely without ensuring that the support services exist in the community;
- Lack of available housing was identified as a concern;
- A residential component should be considered;
- Lack of financial support for participants to meet basic needs while attending DTC has been identified as a crucial concern. This includes resources for food, housing, transportation and child care while attending a DTC program. It was recommended that supports such as bus passes be provided to participants;
- Some groups expressed that the consultation process was not fully inclusive of diversity;
- Concern expressed about services being limited to a specific geographical area;
- Need identified for services to reflect cultural awareness and relevance for Indigenous peoples;
- We heard that many of the potential DTC participants are using several systems;
- DTC needs to address addiction as a disease of the brain and should ensure that the public understands this through a public education campaign;
- Concern noted that not accepting violent offenders would be limiting to potential participants;
- DTC should consider connection to community and friends as integral to rehabilitation;
- Expectations and outcomes for potential participants need to be explicit;
- Harm reduction was stressed as an important component for DTC participants;
- Trauma informed practice should be essential;
- Expression of need for “wrap around” services and a client centered approach;

- Concept of therapeutic court that considers the overlap between mental health and addictions should be considered;
- DTC should consider best practices including cognitive behavioral therapy (CBT), Risk-Need-Responsivity Model (RNR,) skill building programs, problem solving, skills and motivational interviewing;
- Public education, about the needs behind a DTC court will be important to ensure continued confidence in the administration of justice; and minimize potential criticisms that DTC is just another “social” program at the taxpayers’ expense;
- It will be important to incorporate an evaluation framework; and,
- Concerns noted about DTCs being ineffective, too expensive and another “social program” that will have to be borne by the diminishing number of worker taxpayer.

Evaluation

If implemented, a DTC would represent a new program for Newfoundland and Labrador. Evaluations are especially important during the early stages of new program as they can provide useful information on how the program is proceeding. Two types of evaluations, process and outcome, can be helpful in ascertaining whether or not a new program is operating as it was intended to operate and whether it is meeting its intended outcomes. A process evaluation can determine in the early stages if a program is developing the way it was intended, assist in identifying obstacles to implementation and identify any unintended impacts (Grinnell, Gabor & Unaru, 2012). Such evaluations can also generate information to aid in improving program efficiency in service delivery. An outcome evaluation can help determine if program objectives are being met (Grinnell et al., 2012). For example, a DTC evaluation could explore if positive change is occurring for participants as a result of going through the program. Key indicators would include the length of time a person participates in the program, rates of program completion, and changes in rates of drug use and recidivism. Permission from DTC participants would need to be obtained related to the program evaluation. The evaluation mechanisms noted above could be supplemented by feedback from participants and other key stakeholders to help enrich the process.

The DTCFP key performance indicators would also need to be considered as a part of any evaluation. These indicators include:

- Percentage of participants retained for six months in federally funded DTCs; and,
- Percentage of DTC participants receiving a clear (clean) drug screening result (Department of Justice, 2015).

While worthwhile, evaluations can be costly endeavors. Support of the DTCTFP will be required to help advance evaluation work, should a DTC program be implemented in Newfoundland and Labrador.

Conclusion

Upon consideration of the research and literature related to DTCs, the results of consultations with key stakeholders, and information gathered from other jurisdictions regarding outcomes and experiences related to DTCs, the Advisory Committee concludes that a DTC has merit as an alternative to the traditional criminal justice process. As a specialty court, a DTC presents an opportunity to focus on treatment within a health context and recognize the importance of dealing with the underlying issues related to crime in a collaborative manner, including issues related to substance abuse. Indications from the available research are promising and are expected to grow as more robust studies are conducted, which will guide modifications to DTCs and enhance their effectiveness.

The majority of individuals consulted as part of this feasibility study were of the view that there is an identified need for a DTC in Newfoundland and Labrador. An integral part of implementing a DTC involves ensuring that sufficient and appropriate services are available to support DTC participants. The availability of these services has been noted as a concern by many of the people who provided input to this study, as there is currently significant pressure on mental health and addictions services in the Province.

As demonstrated by the recommendations that follow, the collaborative case model approach proposed by the Advisory Committee for a DTC is one that adheres to national standards. This model will require additional resources but will use and build upon existing resources wherever possible. A collaborative case model recognizes that individuals dealing with substance abuse and the criminal justice system may require assistance from a range of different services and supports within the community. This model values the importance of community services and partnerships in which individuals benefit from a variety of services as part of their individualized case plan.

Recommendations

The following recommendations describe the proposed DTC model for Newfoundland and Labrador and core operational considerations. The Advisory Committee recommends that:

1. a DTC be implemented as a pilot project in St. John's. This will enable a new therapeutic court to benefit from existing resources and expertise including Public Prosecution Services of Canada, Provincial Public Prosecutions, Legal Aid Commission and specialty court infrastructure and specialty court liaison staff;
2. the DTC adhere to national standards as identified by the DTCFP regarding target offender population definition, eligibility for entry requirements and successful completion requirements;
3. a collaborative case management model be used in establishing the DTC. This model would require federal support and will build on community resources that currently exist within the province;
4. the proposed DTC have a bail supervision component;
5. the treatment and bail supervision components of the proposed DTC be separate components, but work together collaboratively;
6. the treatment components reflect continued collaboration between the Departments of Justice and Public Safety and Health and Community Services, best practices in addictions and offender treatment, and the recommendations of the report of the All-Party Committee on Mental Health and Addictions;
7. treatment should be grounded in a trauma informed approach;
8. the DTC be supported by two new positions – an addictions treatment coordinator and a case manager/bail supervisor;
9. the DTC have a consistent Judge;
10. the operational base for the treatment component of the proposed DTC be co-located in the community with other resources;
11. standards and guidelines regarding information sharing amongst professionals and participants be developed;
12. consultation occur with the Department of Children, Seniors and Social Development regarding information sharing and limits of confidentiality when working with participants who are involved in a DTC;
13. the proposed DTC work collaboratively with institutional and community resources regarding sharing of clinical support and resources to ensure an inclusive scope of practice;

14. an implementation committee be struck including the following representation: provincial judiciary; court staff; federal and provincial Crown prosecutors; the Department of Health and Community Services; the Department of Advanced Education, Skills and Labour; addictions staff at Her Majesty's Penitentiary; the Department of Justice and Public Safety; the Legal Aid Commission; the Women's Policy Office; Indigenous partners; private bar; community housing supports; and others who may be identified as needed;
15. work of the implementation committee focus on coordination of the pilot project;
16. the implementation committee be respectful of diversity and aim to ensure culturally appropriate and sensitive services are implemented;
17. the input of those with lived experience of substance abuse and the criminal justice system be sought;
18. the practices of the proposed DTC be designed to align with the Canadian Victim Bill of rights;
19. as part of the first year of the program steps be undertaken to examine possible accessibility for residents of the province in other regions via technology;
20. the Departments of Justice and Public Safety and Health and Community Services continue to collaborate regarding education/knowledge exchange in relation to the DTC, including discipline-specific sub-committees;
21. discussions continue with provincial/federal/territorial colleagues to ensure emphasis on best practices as the project moves forward;
22. the Advisory Committee continue to operate in an oversight capacity as a Steering Committee with terms of reference to be developed;
23. terms of reference for appropriate evaluation of the DTC pilot project be developed; and
24. collaboration continue with Justice Canada to access funding for the resources identified.

Operational and Funding Implications

Ongoing dialogue and partnerships with Justice Canada under the DTCCFP will be essential to meeting resource requirements for a pilot DTC in Newfoundland and Labrador. The below chart summarizes the key resource requirements identified.

Resource Requirements	Cost
Addictions/Case Management Staff	One full time resource required
Case Management/Bail Supervisor	One full time resource required
Education/knowledge exchange	Resources required
Legal Aid Commission	In kind
Public Prosecution Services of Canada	In Kind
Provincial Public Prosecutions	In Kind
Specialty court liaison staff	In Kind
Evaluation	Resources required
Urine drug screens	In Kind
Pre-implementation work	Resources required
Capital startup costs including office furniture and computer	Resources required

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Appendix A: Committee Memberships

Advisory Committee

Robin Fowler, Assistant Deputy Minister, Courts and Corporate Services, Department of Justice and Public Safety; Chair

Paula Walsh, Assistant Deputy Minister, Public Safety and Enforcement, Department of Justice & Public Safety

Frances Knickle, QC, Assistant Deputy Minister, Director of Public Prosecutions, Department of Justice and Public Safety

Lauren Chafe, Deputy Provincial Director Legal Services, Legal Aid Commission

Andrew Brown, Team Leader, St. John's Sub-Office, Public Prosecution Service of Canada

John Duggan, Solicitor

Chad Blundon, Director of Policy and Strategic Planning, Department of Justice and Public Safety

Colleen Simms, Director Mental Health and Addictions, Department of Health and Community Services

Cynthia King, Director of Income Support, Advanced Education Skills and Labour

Wilma MacInnis, Director of Court Services, Provincial Court of Newfoundland and Labrador

John Samms, Strategic Advisor to the Minister of Justice and Public Safety and Attorney General, Department of Justice and Public Safety

Michelle Greene, Policy and Program Development Specialist, Department of Health and Community Services

Penny Winter, Program and Policy Development Specialist, Department of Justice and Public Safety

Trish LeGresley, Program and Policy Development Specialist, Department of Justice and Public Safety

Working Group

John Duggan, Solicitor; Co-Chair

Robin Fowler, Assistant Deputy Minister, Courts and Corporate Services, Department of Justice and Public Safety; Co-Chair

Chad Blundon, Director of Policy and Strategic Planning, Department of Justice and Public Safety

Michelle Greene, Policy and Program Development Specialist, Department of Health and Community Services

Penny Winter, Program and Policy Development Specialist, Department of Justice and Public Safety

Trish LeGresley, Program and Policy Development Specialist, Department of Justice and Public Safety

Appendix B: Policy Framework for the Drug Treatment Court Funding Program (DTCFP)

**Policy Framework for the
Drug Treatment Court Funding Program**

August 2014

ACKNOWLEDGEMENT

In 2013, an FPT Working Group was established to provide a forum for informed discussion on Drug Treatment Courts (DTC). Given provincial responsibility for the administration of justice, consensus was achieved on criteria intended to establish a common understanding of DTCs in Canada, while providing flexibility to tailor operating models to individual jurisdictional requirements.

Drug Treatment Courts in Canada

The goal of a drug treatment court (DTC) is to reduce the health, social and economic costs of illicit substance abuse through an innovative partnership between the criminal justice system, drug addiction treatment services and social service providers.

In 2004, the DTC Funding Program was established within Justice Canada in an effort to break the ‘revolving-door’ of repeat offenders in the criminal justice system.

This alternative justice model focuses on difficult-to-serve offenders with serious drug addictions that can threaten community safety, raise public fear of crime and disorder, and place considerable demand on both the criminal justice and health care systems.

Enabling Legislation

Operating within the same legal framework that governs all adult criminal court proceedings, DTCs bring a variety of stakeholders together in an effort to achieve better offender outcomes.

Under section 720(2) of the *Criminal Code*, sentencing of an offender may be delayed with the consent of the Attorney General and the offender to permit the offender to attend a treatment program approved by the province under the supervision of the court, such as an addiction treatment program. This section allows offenders who commit offences under the *Criminal Code* that are motivated by an addiction to drugs to participate in a DTC program, provided that the offender meets the eligibility requirements.

On November 6, 2012, sections 10(4) and 10(5) of the *Controlled Drugs and Substances Act* came into force. These sections allow a court to delay sentencing while a drug-addicted offender either participates in a DTC program approved by the Attorney General or attends a treatment program approved by the province under the supervision of the court as outlined in section 720(2) of the *Criminal Code*. The majority of the offenders participating in existing DTCs have prior drug convictions in the last decade, most notably for trafficking and possession for the purpose of trafficking and so would, therefore, be subject to a mandatory minimum penalty should they be convicted of a further trafficking offence.

By taking responsibility for their criminal charges and taking steps to address their drug addictions issues, offenders in a DTC program become eligible for an exemption from the mandatory minimum penalty. Upon successful completion of the program (on average 12-18 months), the court may choose to exempt the offender from the mandatory jail sentence and may instead impose a lesser non-custodial sentence. This exemption is in acknowledgement of the mitigating factors of substance abuse treatment and the participants’ ability to remain abstinent for a defined period of time.

Drug Treatment Courts in Canada reflect the following nationally recognized principles:

Guiding Principles

- Access to a continuum of drug and other related treatment and rehabilitative services are integrated with justice system case processing;
- Abstinence or reduction in use of illicit drugs is monitored by frequent substance testing;
- Ongoing case management provides social support necessary to achieve social reintegration for the participant;
- Forging partnerships among courts, corrections, treatment and rehabilitation programs, public agencies and community-based organizations to enhance program effectiveness;
- Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' Charter rights;
- A coordinated strategy governs the Courts' response to participants' compliance and non-compliance;
- Timely, certain and consistent sanctions for non-compliance or rewards for compliance are developed;
- Ongoing judicial interaction with each participant is essential; and
- Appropriate flexibility in adjusting program content, including incentives and sanctions, to better achieve program results with particular groups such as women, aboriginals and minority ethnic groups.

The following criteria were developed to establish a common understanding of DTCs in Canada:

- Common definition of a DTC
- Target Offender Population
- Eligibility for entry into a DTC program
- Successful completion criteria

Common Definition of a Drug Treatment Court

A Drug Treatment Court program is an innovative response to address the challenges associated with offenders with serious drug addictions in the criminal justice system, who commit drug motivated offences under the *Controlled Drugs and Substances Act* and/or the *Criminal Code*. Through court-monitored treatment, DTCs take a comprehensive approach that employs judicial supervision and coordinated support for offenders. This improves the health and social well-being of the drug addicted offender that, in turn, results in efficiencies for the justice system over the long term, enhanced public safety, and reduced reliance on broader social services¹.

The vast majority of DTC clients have multiple issues (e.g., serious addiction to illicit drugs, mental health concerns, inadequate housing, reliance on income assistance, minimal employment/education opportunities, etc.) and are assessed as medium to high-risk to reoffend.

Target Offender Population

- 1) Offender with a serious addiction to illicit use of scheduled drugs such as: methamphetamine, cocaine, heroin, or other opiates²; and
- 2) Offender who has been identified as a risk to reoffend for which a treatment plan has been developed that:
 - Matches services to an offender's criminogenic needs and risk of recidivism;
 - Builds on the strengths and abilities of the offender; and
 - Seeks to minimize the adverse health and social consequences associated with drug use (e.g., lifestyle, health and social needs of the offender).

¹ Broader social services such as, but not limited to, community medical services, hospital admissions, emergency room visits and income assistance.

²This includes the illicit use of prescription drugs that is recognized as an emerging issue.

Eligibility for entry into a DTC program

- Offender's drug addiction is confirmed and documented by the appropriate treatment provider connected to the Court and the offender is deemed appropriate for treatment; and
- Crown discretion remains paramount and offenders are deemed ineligible when:
 - The person has been charged with trafficking where the sole motive is financial gain rather than supporting an addiction; and
 - Factors outlined in the *PPSC - Guidelines for Federal Prosecutors- Drug Treatment Courts* (November 8, 2012) –are present; or
 - In cases involving the Provincial Crown, the offender is deemed ineligible under the criteria established by the Provincial Crown.

Successful completion criteria

An offender will be deemed to have successfully completed (subject to the discretion of the Court) a drug treatment court program based on compliance in the following areas:

- proven abstinence that is confirmed by drug testing of drugs such as methamphetamine, cocaine, heroin or other opiates for a minimum of three months; and
- substantial participation in the program as directed by the Court which includes, at a minimum:
 - compliance with treatment components;
 - no new findings of criminal guilt or outstanding Criminal Code or *Controlled Drugs and Substances Act* charges; and
 - evidence of pro-social activity such as employment, education, volunteer work, stable housing, etc.

Appendix C: Drug Treatment Court Site Visits

Yukon Community Wellness Court

A slightly different model operates in Whitehorse and does receive funding from the federal Drug Treatment Court Funding Program. The Yukon Community Wellness Court (CWC) opened in 2007. To be eligible to participate in CWC participants must be an adult who has an outstanding *Criminal Code* charge or a *Controlled Drugs & Substances Act* charge as well as one or more of the following:

- An addiction to alcohol and/or drugs. (Normally, the offence(s) will have been committed either while under the influence of alcohol or drugs or with the intention of obtaining funds to purchase drugs or alcohol);
- A mental health problem; and/or
- An intellectual disability, including but not limited to Fetal Alcohol Spectrum Disorder (FASD). In the case of FASD, a formal diagnosis is not required provided there is sufficient basis to suspect that the offender is suffering from FASD.

CWC has a number of key partners including: Territorial Court of Yukon, Public Prosecution Services of Canada, Yukon Legal Services Society, Court Services, Victim Services, Adult Probation, Offender Programs, Council of Yukon First Nations, Department of Health and Social Services and Royal Canadian Mounted Police. The CWC utilizes a “pre-court team” which includes representatives of many of the partners noted above including duty counsel, defense counsel, designated Crown prosecutor, primary case manager who is a probation officer and also bail supervisor for participant, dedicated CWC Judge and CWC coordinator. The pre-court team meets before court to review the participant’s progress. Potential participants are screened by the Crown prosecutor for eligibility and then are assessed for suitability by primary case manager. If accepted, participants plead guilty before entering the program and sentencing is deferred until completion. The CWC program can take between 12-18 months to complete with specific completion dates being dependent upon the needs and progress of each participant. A wellness plan is developed with the primary case manager and participants are monitored by the court, attending on a bi-weekly basis. The wellness plan reflects a client centered collaborative process that focuses on the needs of the participant and is developed to identify therapeutic treatment and supports that assist in addressing the underlying issue that contribute to the offending behavior. The wellness plan recognizes that services and supports should be culturally relevant to improve outcomes for First Nations offenders. Frequency for

court attendance can change dependent upon participant's performance. CWC requires that participants also be bound by bail conditions and in most cases participants are required to abide by an abstinence clause. Random breath and urine samples can be requested. As it with most other DTCs, a positive sample does not automatically mean a participant is dismissed from the program. Upon successful completion of the participant's wellness plan, the participant then proceeds to a sentencing hearing. The CWC generally has between 10-20 participants (Community Wellness Court Team, personal communication, October 2016, & Hornick, 2014).

Drug Treatment Court Vancouver

The Drug Treatment Court Vancouver DTC (DTCV) has been in operation since 2001. Potential participants go through a screening process to determine eligibility, which includes the following criteria:

- a drug addiction;
- offenses must be motivated by a drug addiction;
- not currently serving a sentence or have outstanding charges of violent offenses;
- not a member of a gang; and
- not a former DTCV graduate.

Potential participants undergo a comprehensive screening and assessment inclusive of the above criteria and those accepted into the DTCV enter the program by entering a guilty plea to the charges and are then placed under strict bail conditions which include reporting to court on a regular (weekly/bi-weekly) basis, random urine drug screen testing; and attending a four-phased intensive day treatment program, which runs for a minimum of fourteen months. The four-phased treatment program offers a broad range of services including individual and group counseling to address complex needs. Participants are also assisted with housing, financial matters, life skills training, and education. Vancouver Coastal Health operates the treatment component of this program. These services are offered at the Drug Court Treatment and Resource Centre (DCTRC) by an integrated team consisting of probation officers, addiction counsellors, physicians, health care workers, and an employment assistance worker. At the DTCV, the probation officers act as case managers who are responsible for supervision of the participants' court orders.

The DTCV has a dedicated judge and the court process includes the use of sanctions and rewards for compliance with the program. Successful completion of the program requires abstinence from illegal drugs for three months prior to graduation; completion of all treatment

phases; no new charges for at least six months prior to graduation; engagement in secure employment/training; stable housing; and connections to community support. Participants attend court on a regular basis and there is a pre-court team meeting where updates and progress are discussed. The DTCV has a target program capacity of around 90 participants (Department of Justice, 2015 & Provincial Court of British Columbia, 2014).

Ottawa Drug Treatment Court

The Ottawa DTC has been in operation since 2006. This model is unique in that the treatment component is contracted out to a private treatment provider: Rideauwood Addictions and Family Services. To be eligible to participate in the Ottawa DTC, the following eligibility criteria must be met:

- must plead guilty, accepting responsibility for offence;
- must voluntarily consent to participate in treatment;
- must be charged with certain non-violent offences;
- offences must have been motivated by/connected to drug dependence; and
- must be approved by the Crown prosecutor, Rideauwood Addiction and Family Services and the Drug Treatment Court judge.

The treatment component of the Ottawa DTC is primarily provided by Rideauwood Addictions and Family Services in conjunction with other community partners. Participation is monitored by the Ottawa Drug Treatment Court team that includes a dedicated judge, duty/defense counsel, treatment providers, and probation staff. Participation in the program is voluntary and, if accepted, participants choose to plead guilty to the offenses and are released on bail with specific conditions. The treatment component lasts for a minimum of nine months and includes group and individual treatment as well as case management services to assist with basic needs such as housing, food, and medical care. Assistance is also provided with education and employment services. Participants are expected to attend court on a regular weekly basis and to provide regular and random urine drug screen testing.

Participants who successfully complete this program go through a graduation process of which there are three levels:

Level 1:

- at least 9 months of participation
- abstinence from all substances for at least six consecutive months

Level 2:

- at least 9 months of participation
- abstinence from all substances for at least three consecutive months

Level 3:

- at least 16 months of participation

Level 1 graduates receive a maximum sentence of one-day probation. Level 2 graduates receive a maximum sentence of 12 months' probation. Level 3 graduates receive a maximum sentence of 18 months' probation.

This program has a capacity of 25-35 participants. (Department of Justice, 2015, & Rideauwood Addiction & Family Services, 2017).

Kentville Court Monitored Drug Treatment Program

The Kentville Provincial Court operates the Court Monitored Drug Treatment Program (CMDTP) in Kings County at the Kentville Provincial Court. This program is relatively new and opened in May 2014 as a demonstration project for the Nova Scotia Department of Justice. The CMDTP receives funding from the Drug Treatment Court Funding Program which is utilized for the treatment component through a partnership with the Annapolis Valley Health, Mental Health and Addictions Services. This program operates similar to other DTCs in its eligibility criteria. There is one salaried employee who is the program coordinator and is an employee of the Nova Scotia Health Authority. Other services are provided in-kind through the Kentville Justice Centre, including operational expenses, facility and court lead. This model also draws in the support of other justice partners including Provincial and Federal Public Prosecution Services, Nova Scotia Legal Aid and Probation Services. These individuals also comprise the "Pre-Court multi-disciplinary" team that meet on a biweekly basis to monitor participants' progress. A consistent judge is part of this team.

The Kentville CMDTP utilizes a client-centered services model. Participants who attend the Kentville program have individualized treatment plans that are developed with the program coordinator. The individualized treatment plans are developed in relation to the social determinants of health and what supports are needed to facilitate change for participants. Treatment services include a range of addictions and other therapeutic related services including withdrawal management, residential intensive treatment, community based counseling, and mental health services. A key component of the Kentville CMDTP was the forging of relationships with existing community programs forming what is now an integral part

of the treatment plan. Treatment intensity also varies dependent upon participant needs. The program coordinator works with participants to develop an individualized case plan. Similar to other DTCs, participants are expected to maintain compliance with agreed upon release conditions, existing court orders, rules of the CMDTP, and their individualized treatment plan. Random, witnessed urine drug screens are also an integral part of the program. Completion of the program includes, among other criteria, proven abstinence for a three-month period.

The Kentville CMDTP is co-located with a Nova Scotia Health Authority facility and has a strong collaboration with the Opioid Replacement Treatment Program that operates out of that facility. This has been identified as an integral part of the CMDTP and is associated with proficient care, a holistic approach to treatment and supportive of a continuity of services for participants (Personal Communications with CMDTP & Court Monitored Drug Treatment Court Program, 2015).

Appendix D: Meetings with Community Groups and Government Departments

Government of Newfoundland and Labrador

Department of Justice and Public Safety, Civil Division

Department of Justice and Public Safety, Corrections and Community Services, Adult Probation

Department of Justice and Public Safety, Corrections and Community Services, Victim Services

Department of Justice and Public Safety, Corrections and Community Services, Adult Custody

Department of Justice and Public Safety, Public Prosecutions

Department of Justice and Public Safety, Royal Newfoundland Constabulary

Eastern Health, Clarenville Addiction Services

Eastern Health, Grace Treatment Centre

Eastern Health, Mental Health and Addictions, Acute Care Services

Eastern Health, Mental Health and Addictions, Community and Addiction Services

Eastern Health, Recovery Centre and Opioid Treatment Centre

Executive Council, Women's Policy Office

Executive Council, Women's Policy Office, Provincial Aboriginal Women's Conference Steering Committee

Other

Provincial Court of Newfoundland and Labrador, Mental Health Court

Newfoundland and Labrador Legal Aid Commission

Government of Canada

Public Prosecution Service of Canada, St. John's

Royal Canadian Mounted Police, "B" Division

Community Organizations

Baccalieu Trail Housing Support Program

Canadian Mental Health Association, Justice Program

Choices for Youth

End Homelessness St. John's, The Front Step Program

Native Friendship Centre, St. John's

Native Friendship Centre, Happy Valley Goose Bay

The John Howard Society of Newfoundland and Labrador

The Pottle Center

Provincial Advisory Council on the Status of Women

Salvation Army, Correctional and Justice Services

Stella's Circle

St. John's Women's Centre

Turnings

U-turn Drop-In Centre, Carbonear

Department of Justice and Public Safety

<http://www.justice.gov.nl.ca/just/>

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Justice and Public Safety