

Coercion in the Courtroom: Unpacking the Reality of False Guilty Pleas in Canada

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Despite a significant growth of scientific knowledge on wrongful convictions and miscarriages of justice, the phenomenon of false guilty pleas remains understudied mainly in Canada. Drawing from data obtained through the responses of a questionnaire administered to 55 defendants and 11 in-depth semi-structured interviews, this article explores the profile of the individuals who enter false guilty pleas and the reasons why they do so. The context and circumstances behind false guilty pleas are ranked by their prevalence (in the survey) and described with interviewees' stories. Finally, the article discusses the perception of the person entering a false guilty plea regarding the coerciveness or voluntariness of their decision.

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I Introduction

In 2018, the Federal/Provincial/ Territorial Heads of Prosecutions Subcommittee on the Prevention of Wrongful Convictions (SPWC) published a report entitled “*Innocence at Stake: The Need for Continued Vigilance to Prevent Wrongful Convictions in Canada*” in which it acknowledged that “factually innocent persons in Canada have, sometimes, for a variety of reasons, pleaded guilty to crimes they did not commit” (SPWC, 2018, p. 169). This may now seem obvious, but it certainly was not at the time. The 2018 report was the first in which the SPWC officially recognized that false guilty pleas had become “an issue of growing concern” (SPWC, 2018, p. 169) in Canada. Yet the conclusion it reached was not very encouraging: “In short, Canada’s criminal justice system is not preventing false guilty pleas in all cases. It is clear they occur; we simply do not know the scope of the phenomenon” (SPWC, 2018, p. 170).

Our knowledge has since improved, particularly thanks to the creation of the Canadian Registry of Wrongful Convictions (Roach, 2023). The work of the Registry has been instrumental in shedding some light on the -so far- 16 cases in which a wrongful conviction arose from a false guilty plea¹. And yet, despite its invaluable contribution to the redress of individual miscarriages of justice, the Registry’s data falls short of providing a global portrait of the phenomenon of false guilty pleas in Canada. This article is a first step toward that goal.

Based on the questionnaire responses provided by 55 defendants and the qualitative data collected via 11 semi-directive interviews -in which participants were asked a set of predetermined open questions but were also given the opportunity to freely and fully express themselves, therefore allowing for spontaneous or new themes to be brought up by the participant- this article aims to contribute to expanding scientific knowledge on the phenomenon of false guilty pleas in the Canadian criminal justice system. First, the article draws a portrait of the defendants who enter false guilty pleas. Second, it explores the reasons leading them to enter false guilty pleas and it ranks such reasons according to their prevalence. Third, the article focuses on the defendants’ perception of the coerciveness or voluntariness of their decision to enter a false guilty plea.

II False guilty pleas v. false confessions

False guilty pleas, in which an innocent defendant falsely admits to his or her guilt in exchange for something -usually a sentence reduction, or a dropped charge- offered by the prosecution, used to be considered Canada’s “dirty little secret” (Makin, cited in Brockman, 2010). For years, they hid in the “underbelly of the justice system” (Makin, cited in Brockman, 2010), and only false confessions during police investigations attracted scholarly attention.

As a result, we accumulated a significant amount of knowledge on false confessions in the context of police interrogations (for a comprehensive review, see Gudjonsson, 2021). However, our understanding of false guilty pleas emerged only when authors began comparing the two phenomena. We discovered that both false confessions and false guilty pleas lead to wrongful convictions (Kennedy, 2016) and can be driven by similar underlying emotions, such as

¹ See <<https://www.wrongfulconvictions.ca/data>> for updated numbers.

hopelessness and fatigue (Kennedy, 2016), or the desire to end an unpleasant situation immediately (Henderson and Levett, 2018). Additionally, it is known that certain disadvantaged segments of society, such as people suffering from mental illness (Redlich et al., 2010), Indigenous peoples (Carling, 2017; Roach, 2015) or juveniles (Redlich, 2010; Zottoli et al., 2016), are more likely to falsely confess and falsely plead guilty than less disadvantaged people, and are at risk of both.

But, while both false confessions and guilty pleas are false acceptances of guilt, sharing many underlying causes, we also learned that they have some differences. Wilford and Wells (2018) notes that false confessions occur during the investigatory phase of proceedings, whereas false guilty pleas take place much later in the process. Consequently, when entering a false confession, defendants have less information about their case, and rarely have a lawyer. In contrast, when a defendant enters a false plea, they usually have significant information about the case but are also experiencing a higher level of procedural fatigue (Wilford and Wells, 2018). False guilty pleas are typically entered in exchange for something offered by the Crown, whereas false confessions lack this element of reciprocity. As Wilford and Wells (2018) note, they are usually entered simply to provide immediate relief from suffering. Finally, the implications of false confessions differ from those of false guilty pleas in that the former still allows the defendant to demand a trial, while those who plead guilty renounce that right (Wilford and Wells, 2018).

The gradual recognition of these differences led scholars to argue that studies on false guilty pleas should be seen as an independent field, one that is related to but different from studies on false confessions. Most notably, in 2010, Redlich called on the scientific community to give false guilty pleas the attention they deserved. Since then, scholarly interest in false guilty pleas as a topic separate from false confessions has grown steadily². Drawing from Siegel (2005) and Brockman (2010), Webster (2022) recently noted in this journal that we have now entered “the third generation of wrongful convictions scholarship” (p. 130), which acknowledges that false guilty pleas play a significant role as a source of wrongful convictions and can occur in proceedings related to all sorts of offences. Third generation literature has, to date, focused on establishing the frequency of false guilty pleas and the reasons behind them, but has paid limited attention to the perception of the coercive or voluntary nature of the defendants’ decision.

III How frequent are false guilty pleas?

Establishing how frequently false guilty pleas occur is a difficult task (Wilford and Khairalla, 2019). We can count the number of cases in which a person who pled guilty has later on been exonerated, but that is as far as we can go if we wish to remain certain about our numbers. Estimates vary considerably depending on the jurisdiction. In the US, around 25% of the National Registry of Exonerations are wrongful convictions involving a false guilty plea (Cardenas, Sanchez and Kassin, 2023; Redlich et al., 2023). Webster (2022) reports that the percentage jumps to 39% in the UK. In Canada, as of June 2024, the Canadian Registry of Wrongful Convictions notes that 15 out of the 89 individuals -or 16.85%- of those who have now been exonerated had entered a guilty plea at the time of their conviction.

² See e.g. the Foreword by Chief Justice Beverley McLachlin (2020) in the inaugural issue of this review.

Yet those cases are only the tip of the iceberg when it comes to false guilty pleas, as most individuals who have entered one have not, and will never be, exonerated. Self-reported data becomes, under these circumstances, an extremely useful source of information. Percentages of studies relying on self-reported data are less disparate than those on exonerated people. In Canada, Ericson and Baranek (1982) reported that 15.8% of the participants in their study had entered a false guilty plea³. In the US, Zottoli *et al.* (2016) found that 26.5% of the minor population they interviewed and 19% of the adult population admitted to having falsely pleaded guilty.

Finally, estimates of guesses given by other court actors can also help determine how prevalent false guilty pleas are in our criminal justice systems. In this regard, Erentzen, Schuller and Clow (2021) asked a sample of criminal defense lawyers in Canada to estimate the prevalence of false pleas among their clients, and found that participants estimated that over 25% of the clients they had represented had falsely pleaded guilty. Choosing a more experimental approach, Brockman (2010) presented her class of law school students with several real case scenarios. When asked to put themselves in the shoes of the defendants, over 50% of the students declared that they would have entered a false guilty plea under those circumstances.

The prevalence of false guilty pleas is impossible to determine with certainty. As Webster (2002) notes, “any description of its frequency is, by necessity, only educated estimates”.

IV Why do false guilty pleas occur?

US-based literature has divided factors leading to false guilty pleas into those inherent to the individual, and those related to the circumstances surrounding the crime and the case (see e.g. Redlich *et al.*, 2023; Wilford and Khairalla, 2019, Zottoli *et al.*, 2016). They have found, for example, that individual characteristics such as belonging to an ethnic minority can increase the likelihood of pleading falsely guilty (Redlich *et al.*, 2010). However, they have also noted that external factors, such as the pressure received by the people surrounding them, narrow decision time frames, and sentencing discounts can be crucial in entering a false guilty plea (Wilford and Khairalla, 2019; Zottoli *et al.*, 2016).

Similarly, in Canada, the third era of scholarship on false guilty pleas has moved “away from the notion of false guilty pleas as rooted in an individual cost-benefit analysis to a consideration of wider institutional/procedural factors – and their underlying drivers” (Webster, 2022, p. 153). Yet it has done so based on what Sherrin (2011) describes as “less than ideal” sources of information.

For example, Brockman (2010) concluded that individual factors such as personal assessments of costs and benefits, and structural and organizational factors such as procedural pressures -like being denied bail and facing an uncertain amount of time in jail- can contribute to a defendant abandoning their right to trial and falsely pleading guilty. His conclusions are based

³ Ericson and Baranek (1982) conducted 101 open-focus interviews, in which it emerged that 36 participants claimed they were innocent of the charges they had been convicted of. Despite considering themselves innocent, 16 out of the 36 had pleaded guilty as charged.

on the analysis of court documents on only three prominent Canadian cases (*Brant*, *Hanemaayer*, and *Hennessey and Cheeseman*).

Similarly, Kennedy (2016) also based his study on case law analysis and court documents, and his conclusions are mostly drawn from the cases of *Hanemaayer*, *Kumar*, and *Bates*. Kennedy's (2016) study identified ten factors that cause innocent defendants to enter a false guilty plea, including powerful sentence reductions, lack of confidence in the defendant's lawyer, overconfidence in the opinion of experts, fear of going to jail and/or spending a lengthy time on remand, cultural and/or family reasons, the financial and emotional costs of trials and the feelings of anxiety, fear and stress that result from the combination of all the previous reasons.

Finally, Sherrin's (2011) study concluded that the most common reasons defendants enter false guilty pleas include the desire to minimize the sentence, the need to avoid the costs of proceedings, factual and/or legal misunderstandings. Sherrin (2011) also observed the existence of other –less frequent– reasons, such as the will to protect others, pleading guilty to a set of charges as a whole, being charged with vague accusation⁴ or pleading guilty to relieve the psychological stress of a trial. Again, however, these conclusions were based on the analysis of court documents and media reports only, and the author did not give further information or details on the specific data collection methods or used data.

Scientific knowledge on false guilty pleas is steadily growing, and “Canada's dirty little secret” (Brockman, 2010) is becoming unveiled. Yet despite the efforts of scholars to uncover the prevalence of false guilty pleas and the motivations behind them, no recent Canadian scholarship has explored false guilty pleas based on comprehensive empirical data collection methods. More than 40 years have passed since the last empirically based study on the motivations behind false guilty pleas was published (Ericson and Baranek, 1982), and the field is in need of an urgent update. As Sherrin (2011) concluded, “[c]learly, more and better research is required” (footnote 29).

This article addresses Sherrin's (2011) call for research in this area. Utilizing qualitative data obtained through semi-structured interviews and survey responses from over one hundred defendants in Canadian courts, we present a contemporary analysis of the landscape of false guilty pleas in Canada and the motivations that drive them. In the first part of the article, we contribute to a better understanding of the profile of the people who enter false guilty pleas. The second part focuses on the reasons that motivate defendants to enter a false guilty plea. We echo the conclusions of Ericson and Baranek (1982), Brockman (2010), Sherrin (2011) and Kennedy (2016), and we expand on them by ranking the motivations behind false guilty pleas in terms of prevalence and by adding several new factors to the list. In the last section of the article, we focus on the interviewees' perception of the coercive aspect of their decision. We present their vision of the pressures or incentives felt during their decision-making.

⁴ Sherrin (2011, footnote 59) refers here to the case of *R v Doiron* (1972), 9 CCC (2d) 137 (BCSC), in which the defendant pled guilty to a breach of a probation order that was declared void on appeal for being extremely “vague, uncertain and contradictory”.

V Methods

The results of this article are based on two datasets (semi-structured interviews and questionnaire) of a larger project about plea bargains, in which two of the coauthors were involved between 2012 and 2015⁵.

Several participants in the first phase of that project mentioned during their semi-structured interviews that they had pleaded guilty to charges they considered themselves innocent of. Realizing that the phenomenon of false guilty pleas was far from marginal, the research team decided to diversify the sample, specifically targeting defendants who had falsely pleaded guilty. The final sample consists of 23 individuals, 11 of whom reported having entered a false guilty plea at least once in their lives.

This article draws on the contents of these 11 interviews. Defendants were asked to describe the judicial process, to explain their decision to plead guilty, and to reflect on the advantages and disadvantages of such plea bargaining. Since we were interested in their own representation and experiences, no further checks, beyond their own statements, were made as to their guilt or the actual outcome of the case. Interviews were coded by the research team using NVivo following a thematic analysis.

Drawing on these results, the team integrated a questionnaire in the second phase of the project to validate to what extent the findings of the interviews could be extended to a larger number of defendants. Recruitment was made via the mediation of the provincial prison in which defendants were detained (n=71), or through the relevant supervision agency (n=55) for those serving a sentence in the community. The only criterion for inclusion was that the defendants' most recent criminal case be concluded and sentenced. A total of 126 complete responses were received. Out of the 126 participants, 55 declared that they had pleaded guilty to charges they had not committed at least once in their lives.

The questionnaire was divided into six sections, but this article draws exclusively on the results of sections 4 and 6 of the questionnaires. Section 4 inquired about false guilty pleas. It addressed the context surrounding the false plea, enquiring about the charges faced and the main reasons for pleading guilty. Respondents were presented with a series of 12 statements (such as "I pleaded guilty to this/these charge(s) as part of a global sentencing agreement" or "I was afraid of losing the prosecutor's offer if I contested these charges"), and they were then invited to say if each of the statements applied to their situation or not. Section 6 gathered information about the defendant (i.e. socio-demographic profile and past contacts with the criminal justice system).

The results presented in this article focus on the responses of the 55 participants to the questionnaire and the 11 individuals interviewed who stated they had falsely pleaded guilty. Therefore, the findings are based on the stories of 66 people.

⁵ The results and the methodology of the project have been published in Deslauriers-Varin et Leclerc (2020).

VI Results

The following sections present the profiles of people who enter false guilty pleas (1), the main reason of their plea (2) and their vision of the coercive nature of their decision (3).

A. Profiles

Of the 126 questionnaire respondents, 55 of them (43% of the sample) admitted to having pleaded falsely guilty at least once. Our results suggest that false pleas are much less frequent among women (17%) and much more frequent among people who identify as belonging to an ethnic minority (70%) than they are among the general population. However, the small numbers of these two sub-groups (24 and 17 out of the 126 participants' sample, respectively) lead us to interpret these results with caution, especially since, while the findings regarding ethnicity match previous observations (Redlich *et al.*, 2010; Roach, 2023), our results on the significance of gender do not entirely align with the findings of existing literature. Indeed, Redlich *et al.*'s (2023) study of the cases in the National Registry of Exonerations had found gender to be non-significant, and Roach's (2023) analysis of the data of the Canadian Registry indicated that false guilty pleas were more frequent amongst women. Our results should be validated with a larger sample to be able to empirically validate or contradict these previous findings.

The offences to which the 55 participants who admitted to having pleaded falsely guilty were convicted are as follows: 53% of them (6 out of 11) were offences against a person, 30% involved property crimes and 17% involved drug crimes. These results partially confirm the findings by Redlich *et al.* (2023), who reported that 50% of their sample of cases in which a false guilty plea had been issued involved an offence against a person. However, in their study, drug crimes amounted to 33% of the cases, which is far from the 17% shown by our results.

Participants were asked to specify whether they were incarcerated or not at the time of the plea, and our results show that the probability of a defendant entering a false guilty plea increases when the person is incarcerated. The prevalence of false guilty pleas is at 65% for those who pleaded guilty while in prison, but it goes down to 16% for those who were not incarcerated at the time. These numbers confirm the findings of both Kellough and Wortley's (2002) and Webster's (2022) study, which suggested that Crowns could more easily persuade the accused to plead guilty –falsely or not- when the latter was held in pre-trial custody.

Our data also included information on the participants' criminal records and previous convictions. While the overall percentage of false guilty pleas among all the questionnaire respondents was 43%, that number dropped to 29% if we only considered participants with no prior record. These findings echo the results obtained by Gudjonsson *et al.* (2006) about false confessions in police settings, which showed that increased contacts with the criminal justice system were associated with a higher probability of entering a false confession.

Interestingly, our results showed that the prevalence of false guilty pleas among those who had previously served a prison term was at 67%, whereas it was less than 30% among those who had never been to prison before the last charge. This allows us to conclude that, while having a criminal record increases the likelihood of entering a false guilty plea, having been previously

imprisoned has an even more significant impact on the probability of someone falsely pleading guilty. These findings, however, must be interpreted in the light of two elements. Firstly, the fact that past imprisonment increases the likelihood of a false pleading guilty certainly influences the high prevalence of false guilty pleas found in our sample, for many participants in our study were recruited from prison. Indeed, our prevalence (43%) is significantly higher than previous studies: in Canada, Ericson and Baranek (1982) found a prevalence rate of 23%, and in the US the results of Zottoli et al. (2016) indicated a prevalence of 27% among youth defendants and 19% among adults. Secondly, it should be remembered that this rate refers to the accused's perception of their guilt, and it cannot be ruled out that some may have considered themselves innocent of charges for which they were legally guilty⁶.

Finally, most of them (53 survey respondents) said their lawyer was aware that they were pleading guilty despite considering themselves innocent of these offences. This does not come as a surprise, for the practice of lawyers pressuring their clients into pleading guilty despite being aware of their innocence because of bureaucratic and managerial concerns is well documented in the sociolegal literature (Nash et al., 2024), particularly when lawyers are representing marginalized defendants (Kohler-Haussman, 2018; Van Cleve, 2016).

B. Reasons and context of the false guilty plea

The results presented here draw from section 4 of the survey, which asked respondents a series of questions designed to capture the context in which they had entered a false guilty plea. Table 1 below shows the statements of the questionnaire and the percentage of respondents who said the statement applied to their situation (ranked by percentage, from high to low). Questionnaire results are complemented with qualitative data obtained via the interviews.

Table 1. Context of false guilty pleas.

I pleaded guilty to this or these count(s) as part of a global sentencing agreement.	76%
I was afraid of losing the prosecutor's offer if I contested the count(s).	
I pleaded guilty because I was tired of court proceedings and wanted to settle the case.	73%
I pleaded guilty because I was afraid of receiving a harsher sentence at trial.	58%
I pleaded guilty without knowing or understanding the issues or consequences of my plea or sentence.	38%
I pleaded guilty to protect a loved one.	33%

⁶ For example, some people accused of complicity claimed to be innocent because they had no knowledge of the other person's criminal activities, or were not directly involved in them. However, under the law, they do not need to have criminal intent if it can be shown that there was recklessness or wilful blindness on their part. Thus, a person who does not perceive himself as guilty in fact may still be guilty in law. The importance of this perception should not be underestimated, since in most criminal justice systems, to be considered valid, a guilty plea must be entered in a free and informed manner, and must mean that the person acknowledges his or her guilt and "admits the essential elements of the offence in question" (section 606 (1.1) of the Canadian Criminal Code).

I pleaded guilty on the day of trial when I had originally intended to plead not guilty.	31%
I pleaded guilty because I was certain of being found guilty at trial.	29%
I pleaded guilty under pressure from my lawyer.	24%
I was presented with new facts, with very little time to make an informed decision	22%
I pleaded guilty because I couldn't afford a trial	22%
I pleaded guilty for "time served" on remand. Pleading guilty allowed me to get out of prison.	20%
I pleaded guilty thinking I could appeal the decision afterwards	2%

The vast majority (76%) of participants said they had pleaded guilty as **part of a global sentencing agreement**, and that they feared losing the Crown's offer if they contested some of the counts included in the deal. Several explained that acting this way involved a cost-benefit analysis because it often meant that they would end up receiving a much more lenient sentence.

This was particularly true for defendants with a history of previous criminal convictions. Denis, who had a lengthy criminal record with over 300 priors, explained, for instance, that he had pleaded guilty five or six times to offences he had not committed:

It's happened to me a lot. You have several charges at once; you go to court for 30 counts. Four of them aren't you, and at the end of the day, you get a good deal. [...] Some people will say, 'I can't risk losing because I need my record to be clean'. He'll fight to the bitter end [...] I've got so many accusations that it's not going to make any difference to a new employer. (Denis)

Denis' statement illustrates a clear pattern among participants with significant criminal records: because of their criminal history, defendants believe that their chances of not being convicted are extremely small. They are therefore more likely to accept a plea deal 'package', even if it means accepting that several additional counts are added to the accusation.

Almost three-quarters of the participants (73%) also linked their false guilty plea to **procedural fatigue**, that is, the fact that they were tired of the proceedings and wanted to settle the case just to bring it to an end. Didier describes this fatigue as follows:

It's not a free decision... for me it was too heavy. I needed to take the load off my back (...) going to court all the time, to the judge, to the lawyers, you lose your job, 2-3 hours, no, no, no, it was too much (Didier)

Being threatened by judges and prosecutors with the **imposition of a harsher sentence at trial** contributed to 58% of the false guilty pleas of our questionnaire sample. Entering a guilty plea to avoid the risk of a harsher sentence was a strategy widely shared among participants:

You start with six years, then they offer you six months. There are two charges; it's not you. You know. That's the example that struck me the most. You can't turn that down. If you plead not guilty, the judge will say: "Next time, I'll offer you three years". (Denis)

38% of the questionnaire respondents who entered a false plea reported having done so **without being properly informed** of what such a decision entailed. The interview results show that such a lack of information can relate to: 1) the plea itself, 2) the consequences of the plea and/or the sentence, and 3) the judicial proceedings. The interviewees blame their lawyers for this lack of information: they either consider them to be incompetent, say they lack investment in the case or believe they are being dishonest with them.

Theresa's case illustrates how defendants might lack information on the plea itself: not fully understanding what was going on in court, at the time of her plea, she thought she was pleading guilty only to one count of extortion. She was, however, unknowingly pleaded guilty to a robbery for which she considered herself innocent. Theresa only discovered this a few years later, when she found out that her record showed a prior robbery conviction. To date, she remains convinced that her lawyer took advantage of her lack of understanding of the judicial procedures to get her to accept a charge to which she had previously categorically refused to plead guilty.

Defendants also lack information about the consequences of a plea and the sentence that follows. As Serge noted, they often lack information about the conditions under which they will serve their sentence: following his lawyer's advice, Serge pleaded guilty to avoid prison and get a conditional sentence, only he later discovered that the conditional sentence involved living under house arrest for nine months. Serge said he would never have pleaded guilty had his lawyer told him that a conditional sentence would entail such harsh conditions.

Often, the actual duration of the sentence that will follow the plea is also unknown. Damien, for instance, pleaded guilty for the duration of the "time served" in pre-trial detention, unaware that the Crown had added two years' probation to the deal without his prior knowledge and that, as a result, he still had some time to serve. Damien said he would never have pleaded guilty, knowing that his sentence would not be fully completed.

Defendants also lack information about the collateral consequences that will be triggered by the conviction. For instance, Didier explained he entered a false guilty plea without knowing that his criminal conviction would trigger a travel ban. He would not have pleaded guilty had he been aware of this, for his job required him to travel to the United States regularly.

Finally, the lack of information can also relate to the judicial proceedings. For example, two interviewees explained that they pleaded guilty on the morning of the trial to avoid being represented by a lawyer they did not trust. Not only did they not know they had the right to change lawyers, but one of them also thought they could easily appeal the decision afterwards. Unfortunately, they soon realized that appealing their own plea was a complex, costly and uncertain process.

A third of the questionnaire respondents (33%) reported entering a false guilty plea **to protect a loved one**. Our interviews corroborate this. They show that, in some cases, false plea deals are entered to clear someone else's record. Martin was particularly open about this:

They arrested me. The police... my wife was further away. "Look, the guy didn't recognize you, nobody recognized you, we have no proof. But between you and me,

we know you were there. Your girlfriend's been identified. She's in trouble. She has no record. She's pregnant. We can be at your place in an hour, if you sign a statement, it's all you. You don't want your girlfriend..." I signed the declaration. I did this. I did this. I signed it, blah, blah, blah. Thank you. My girlfriend has been released. No boss, no problem, spared. I did seven and a half months for this. [...] I put it all on myself because they asked me to. (Martin)

Martin's interview allowed us to flag another potential false plea motivation: the desire to limit the amount of time spent away from loved ones. Indeed, Martin recounted having, on one other occasion, falsely pleaded guilty to an accusation of dangerous driving in exchange for 90 days of weekends to make sure he did not abandon his family during a long period of incarceration:

I had no choice but to accept. I want to see my daughter grow up, I want to be there during the week, I can't afford... [...] I went to court and he offered me this: you stay inside, you don't see your wife, you don't see your child being born, or you take the 90 days, you shut your mouth, you plead guilty. Common sense, I took the 90 days, except that my driver's license is revoked for 10 years because of dangerous driving that I never did. (Martin)

Almost a third of the defendants who replied to the questionnaire (31%) said they falsely pleaded guilty because of a last-minute change of plans, having originally planned to plead not guilty. Simultaneously, 22% of the questionnaire respondents who entered false guilty pleas said they did so because they were presented with new facts with very little time to make an informed decision.

The interviews reviewed the existence of a clear pattern: the defendant would arrive at the courthouse on the morning of the trial thinking they would plead not guilty, but their lawyer would tell them that a new witness or fact had (or had not) appeared, which increased the risk of being convicted. The lawyer would go on to mention that they had received a very interesting offer from the Crown, which they recommended the defendant accept. Serge, accused of having assaulted and threatened his ex-partner, explained a clear example of this pattern:

My lawyer had promised me: "don't worry, I'll get you out of this"... When we got to the trial, my lawyer told me: "I can't do anything for you because you have robberies in the past"... (Serge)

Serge told us that he had summarized his story to his lawyer during their first meeting. However, the lawyer never read his file, and they never discussed Serge's situation again before the day of the trial. Moments before the trial was due to start, the lawyer explained to Serge that his ex-spouse had filed new charges against him and that it was preferable for him to plead guilty to the initial charges. Otherwise, the prosecutor would add those new charges to the accusation. Serge told us that he was feeling forced to plead guilty, because otherwise the trial would proceed and he would be represented by this lawyer, whom he considered incompetent and did not trust anymore. The lawyer explained to him that he could ask to change lawyers, but added that judges rarely accepted such requests on the morning of the trial. Serge believed him, and ended up pleading falsely guilty to all the original charges.

Serge's story leads us to an additional reason for pleading falsely guilty. 24% of the questionnaire respondents who had entered false guilty pleas explained they had done so because they felt pressured to plead guilty by their lawyer.

The interview results showed that the persuasion levels varied from one defendant to another. In many cases, lawyers openly urged the defendants to plead guilty. Some do so in an extremely blunt manner, sometimes even threatening the defendant to withdraw from the case if they did not accept their recommended position⁷. Yves' testimonial captures how aggressive lawyers can sometimes be:

I didn't want to plead guilty. The judge said to me "are you pleading guilty?" » Four times. My lawyer pushed me, he said to me "say guilty ostie. Get it over with." So I pleaded guilty. (Yves)

Others, as Martin recounts, are more subtle. They would pressure their clients into pleading falsely guilty by highlighting the non-rational aspect of declaring their innocence:

My lawyer said, look, whether you did it or not, I don't care. That's not why I'm here. You've been in there for x amount of time, with time and a half, double time, you've got time done, plead guilty, you get out straight away. That was the deal in my head. Trial dates are rare. You're sick of being in prison, you're overcrowded. You get shuffled around. You don't have a cigarette. The violence, the aggression. You're fed up. And they give you a big way out, just the same, plead guilty. You go out there, there. Yes, I do. (Martin)

In some other cases, like Didier and Serge's, the lawyers seem to take advantage of the defendants' weariness to force them to plead guilty:

I say that I was forced by my lawyer. It's as if she was tired too... She saw that I wasn't happy [...] she told me, if you want this to end, you're going to have to plead guilty. (Didier)

They want to go to court to get the pay, and when they see that you're fed up, that you say "no, I want this to be resolved, I don't want to go to class anymore", well then they... [you make an offer]. (Serge)

More than a quarter (29%) of the questionnaire participants entered a false guilty plea driven by the fear of losing the case and the certainty that they would be convicted at trial. This seemed to be a common strategy among participants whose defenses relied on what lawyers refer to as "bad witnesses", an expression usually used to refer to witnesses with a criminal record who are unlikely to be given full credit by the court:

She said, "It's not easy because there's one person who has no record, an impeccable citizen, and you, you have quite a history. [...] If the prosecutor or the defendant is

⁷ 7% of our respondents said they had been threatened by their lawyer.

questioned, they have the right to expose my history. She said: "At that point, forget it, you'll be convicted" [...] If he [the witness] repeats the same words he said in front of the judge, it's highly likely that you'll be found guilty. (Éric)

Participants suffering from low self-confidence and/or substance abuse issues were also categorized as "bad witnesses" by their lawyers. Driven by the certainty of a future conviction, these participants also opted to plead guilty:

Before the trial, we had a preparatory meeting, and she had me do a mock interrogation... At that point, my anxiety had increased my alcohol consumption. Which meant I wasn't a very good witness. My psychological state and my alcohol consumption worked against me. (Raymond)

I said to him: "I'll plead not guilty, I'm not guilty of anything". He said, "Yes, but we're going to have a jury trial. [It's long, it's exhausting, they're going to ask you questions you won't know how to answer. It's because I was always bawling too, he could see I wasn't very, very solid. "He said, "You have to be well shod if you want to sue, because it's very difficult. That's what he told me. (Virginie)

22% of the participants who had entered false guilty pleas reported doing so because they could not afford to go to trial. Some of the interviewees added that, even if they did have the financial means to go to trial, they eventually got tired of paying for their defense. Given the uncertainty of the verdict or the mildness of the sentence at stake, they felt no longer sure that the investment was worth it.

Lastly, only one-fifth of the false guilty pleas (20%) were entered to "serve time" quickly. Under the current Canadian regulations, time spent in pre-trial detention is not automatically credited to the sentence imposed. As such, many defendants explained that, if the sentence they faced did not involve incarceration (or it involved a period of incarceration that was shorter or equivalent to what the person had already served in pre-trial detention), they preferred to enter a false guilty plea rather than to maintain their innocence while staying in pre-trial detention. Martin sums up the dilemma that many defendants face:

Nobody's going to do two years in prison if they can do a month by pleading guilty. Look, I don't want to lose two years of my life. I'm going to take on the stain on my record. Every time, I want to get out faster. These are life choices I've made, and I accept them. But it's sad because that's the way it is. (Martin)

It is interesting to note that some of the reasons for falsely pleading guilty that came up in the interviews, such as the forced plea on the morning of the trial, were ultimately not so present in the entire questionnaire sample (31%). Similarly, certain reasons frequently mentioned in the questionnaire, such as the protection of a loved one (33%), were rarely discussed in the interviews.

Comparing our results to those obtained by previous scholars is tricky, for no existing studies have, to our knowledge, produced a detailed list ranking the prevalence of the reasons why defendants enter false guilty pleas. Despite that, we can still draw some important conclusions as

to what our results tell us about previous literature. For example, our findings allow us to confirm that Ericson and Baranek's (1982) study findings are still broadly applicable to the present reality. Some of the most common reasons for falsely pleading guilty, as identified by these authors in 1982 (*ie.* perceived risk of facing worse consequences if found guilty, procedural fatigue and accepting charges as part of a package) closely match the reasons featuring at the top three positions of our ranking. Others, such as feeling pressured by their lawyer, avoiding serving 'dead time' in pretrial detention, or pleading guilty due to a lack of information, are less prevalent but still present in our results as well. Interestingly, the cases reported by Ericson and Baranek (1982) in which the defendant pleaded falsely guilty because of a lack of information or a misunderstanding only concerned individuals who were not represented by a lawyer. Our results nuance that by showing that the lack of information can also apply to individuals with legal representation.

Our results also elucidate and expand on Sherrin's (2011) findings, which identified the prospect of significant relief, the possibility of avoiding costs, and the lack of information as the most commonly cited reasons for pleading falsely guilty. Additional reasons flagged by Sherrin (2011) and confirmed by our results include the desire to protect someone else and accepting charges as part of a plea package. Equally, Zottoli *et al.*'s (2016) observations on the influence that short time frames have on the defendants' decisions are also confirmed by our results.

Finally, it is worth noting that there are two reasons identified by other authors that are not featured in our results. First, Kennedy's (2016) analysis of the Canadian cases of *Hanemaayer*, *Kumar*, and *Bates* shows that the system's overreliance on Crown experts' opinions⁸ and mistrust of its own defence counsel can result in an innocent defendant pleading falsely guilty. None of our participants, however, mentioned pleading falsely guilty because of the existence of an expert opinion against them. Second, scholars have also found out that false guilty pleas can arise from purely psychological reasons such as overwhelming fear, stress and anxiety (Kennedy, 2016; Sherrin, 2011). For us, these reasons are sometimes mentioned as additional motivations in the interviews, but they are never the primary source of the false plea.

C. False guilty pleas: a free or constrained choice?

Previous studies have established that the decision to enter a guilty plea -whether false or not- arises from a continuum of coercion. Leclerc and Euvrard (2019) noted that defendants at one end of the continuum describe their decision as genuinely voluntary and rational, whereas defendants at the other end report having little to no control over the situation and their decision. Most defendants place themselves somewhere in between, feeling they retain some level of control but are simultaneously coerced. Focusing specifically on false guilty pleas, existing literature also

⁸ Several reported wrongful convictions in Canada arise from false guilty pleas motivated by the belief from defendants -or their defense counsel- that it would be impossible to challenge the expert opinion of a pediatric forensic pathologist. In the case of *Kumar*, for example, the defendant was advised to plead guilty despite claiming to be innocent because the defense lawyer thought that it would be impossible to discredit the testimony of the pediatric forensic pathologist. It was later on established that the so-called expert lacked the requisite training and qualifications to work as such. See Goudge (2008) for the results of the public inquiry into the matter.

acknowledges that, on some occasions, pleading guilty while innocent can have a rational or utilitarian aspect for the defendant (Daftary-Kapur and Zottoli, 2014; Zottoli *et al.*, 2016). As noted by Roach (2023), in many cases they result from “sentence and charge bargains that are difficult for many accused and even the hypothetical ‘reasonable person’ to decline” (p. 28).

The results show that this was indeed the case for some of our participants, who claimed they entered a false plea rationally because they felt they were getting an advantage. Others, instead, said they had done it against their will because they felt forced to do so.

The majority of our interviewees who had falsely pleaded guilty (8 out of 11) mentioned that their plea was anything but a free and informed decision, as evidenced by the quote from Raymond:

I don't think I made a very free choice because I didn't have all the useful information to make the decision, to enlighten me. Then, my conditions, personally [he was depressed and consumed a lot of alcohol at that time] or financially, and the way all of this was presented to me, did not allow me to have all the options. (Raymond)

Only 3 out of the 11 interviewees clearly expressed that entering a false guilty plea had been a rational decision which had provided them with certain advantages. They explained that, although certain factors constrained their plea, they freely chose to falsely plead guilty, with full knowledge of the facts, because this situation was advantageous to them. According to Denis, this is something that comes naturally to innocent people who falsely plead guilty:

No one is going to plead guilty to something if it doesn't benefit them somewhere [...] We no longer believe in justice. [...] we try to get the greatest possible benefit from it. They're trying to incarcerate me for things I didn't do...I'll take whatever I can get the other way. It's give-and-take. [...] If the deal is not interesting, for example there are three years ago, it is certain that I would have contested at least the charges which were not mine. (Denis)

Sometimes, though, the line between free and forced pleas is more subtle and difficult to draw. Denis, who claimed his false guilty plea was a rational and free decision, acknowledged that he had sometimes felt pressured to accept a plea deal:

They always give me a choice. This morning, that's what I have to offer you, it's up to you to say yes or no. [...] They say it all the time; It's a deal that won't happen again. I have good lawyers who explain to me: “well otherwise it's in two months before this judge, but he's too harsh for that...” They already tell me “plead guilty”. They strongly suggest you deep down. (Denis)

Denis' statement shows that false guilty pleas may not be as voluntary as defendants wish to believe for although they freely and voluntarily agreed to plead guilty, they felt pressure having been encouraged, or sometimes even forced, to accept an offer that they found acceptable, but not optimal. These results echo the findings by Zottoli *et al.* (2016), who noted that, despite what the defendants may feel or believe, « deep discounts and external time pressures bring into question the true voluntariness of plea decisions » (p. 257).

VII Conclusion

The pressures leading to false guilty pleas are deeply rooted in the structural and procedural aspects of the Canadian judicial system. Extended case delays and the over-reliance on pre-trial detention create an environment where defendants may feel compelled to plead guilty, regardless of their actual guilt, simply to escape the burdens of a drawn-out legal process. To address these pressures, a more efficient case management approach is essential, where reducing delays and minimizing the use of pre-trial detention could significantly lower the instances where defendants are pushed toward making hasty, uninformed decisions.

Moreover, the current lack of transparency surrounding the actual benefits of pleading guilty adds to the uncertainty faced by defendants. Many are left with an incomplete understanding of the consequences and potential outcomes of their pleas. Enhancing transparency in plea negotiations, ensuring that defendants fully comprehend the implications of their decisions, and clarifying the advantages or disadvantages of pleading guilty could help reduce the ambiguity that often leads to coerced or uninformed pleas.

Finally, the role of defense lawyers is crucial in this context. Defendants must receive better support and more thorough guidance from their legal representatives. Ensuring that attorneys have adequate time, resources, and training to inform and counsel their clients properly is essential. This not only helps in making more informed decisions but also restores a level of trust in the legal process, allowing defendants to feel that their rights are being adequately protected. Indeed, our findings highlight a stark inequality in access to fundamental rights, such as the right to a full defense and a fair trial. It appears that the ability to pursue a trial is more of a privilege reserved for those fortunate or lucky enough to have a committed lawyer. This raises serious concerns about the fairness and equity of the justice system. Addressing these systemic pressures and providing adequate support to defendants is crucial to ensure that the justice system upholds its promise of fairness and equity for all.

While this article has primarily focused on understanding the defendants' perspectives and the pressures that lead them to falsely plead guilty, future research should delve deeper into how these perceptions align with legal definitions and whether they could be legally recognized as false pleas. Additionally, the apparent higher prevalence of false guilty pleas among certain groups, particularly ethnic minorities, warrants further investigation to explore the underlying causes and potential solutions.

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