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COMMITTEE REPORT

NO: **P015** DATE: **October 26, 2015**

PUBLIC SAFETY COMMITEE

TO: **Mayor & Council** DATE **October 23, 2015**

FROM: **Crime Reduction Strategy Manager** FILE: **7450-30**

SUBJECT: **The Provincial Blue Ribbon Panel on Crime Reduction**

RECOMMENDATION

The City Manager's Department recommends that the Public Safety Committee receive this report as information.

INTENT

The purpose of this report is to provide information to the Public Safety Committee on the Province's Blue Ribbon Panel on Crime Reduction and highlight how the City is contributing to its recommendations.

BACKGROUND

In February 2012, the B.C. government launched the Justice Reform Initiative with the intent to identify actions for government, the judiciary, the legal profession, police and other stakeholders involved in community safety and crime reduction efforts across the province to improve issues specific to the timeliness and effectiveness of justice services.

Under the newly aligned Ministry of Justice, one of Canada's most respected litigators Geoffrey Cowper, QC, was appointed February 2012 to identify long-term, fiscally responsible solutions to improve outcomes and accountability. Cowper's report, titled "A Criminal Justice System for the 21st Century", attached as Appendix "I", recommended a broad collection of changes, including the development of a province-wide crime reduction plan. Crime reduction is also singled out as a priority in the Province's White Paper Part Two: A Timely and Balanced Justice System (Appendix "II"), as well as in the B.C. Policing and Community Safety Plan (Appendix "III").

Specifically, Action Item #8 of the ***British Columbia Policing and Community Safety Plan*** states:

> *In support of enhancing community safety, the Ministry of Justice will work with stakeholders to develop strategies to: a) support crime prevention efforts; b) support province-led crime reduction initiatives; and c) support further development of civil/administrative law strategies to enhance community safety.*

In March 2013, Mr. Cowper was invited by the Surrey Board of Trade to a business breakfast event held in Surrey. The event was well attended and garnished excellent media coverage. The Now newspaper was one of the media present and published an article to profile the event.

In June 2013, Abbotsford South MLA Darryl Plecas was appointed to the new role of Parliamentary Secretary for Crime Reduction. As a well-recognized and accomplished criminologist and researcher with over 34 years of experience, MLA Plecas led the development of the Blue-Ribbon Panel. This team of experts was tasked with examining crime reduction opportunities and developing recommendations designed to reduce crime. Recognizing that a broad range of strategies and actions were already well established and underway across B.C., the Panel formulated a series of stakeholder meetings including several which were held in Surrey throughout the 2013-2014.

DISCUSSION

Between September 2013 and March 2014, the Blue Ribbon Panel conducted their consultation process. The team met with a very broad range of stakeholders in over 14 locations throughout B.C, and also received 36 written submissions from others who were unable to meet face to face. This process resulted in the Panel meeting with more than 600 individuals including judges, prosecutors, defense lawyers, police, front-line service providers, local elected officials, First Nations leaders, prolific offenders and people in treatment for addictions. In Surrey, the consultation took place at the new City hall on February 28, 2014 and included various members of Council, city staff and key stakeholders from across the City.

The following themes were identified as being the most immediately relevant to the Panel's terms of reference:

1. Focusing on offenders
2. Alternatives to incarceration
3. Addictions and mental illness
4. Inter-agency collaboration
5. Domestic Violence
6. First Nations communities
7. Rapid economic development
8. Funding

The final report titled "Getting Serious About Crime Reduction - Report of the Blue Ribbon Panel on Crime Reduction" (Appendix "IV"), was officially released on December 18, 2014. The findings are summarized into the following 6 specific recommendations;

- Recommendation #1 - Manage prolific and priority offenders more effectively.
- Recommendation #2 - Make quality mental health and addiction services more accessible.
- Recommendation #3 - Make greater use of restorative justice.
- Recommendation #4 - Support an increased emphasis on designing out crime.
- Recommendation #5 - Strengthen inter-agency collaboration.
- Recommendation #6 - Re-examine funding approaches to provide better outcomes.

Surrey Specific Contributions

The City of Surrey's Crime Reduction Strategy was highlighted within the Blue Ribbon Panel report in the "Overview of Current Initiatives" section as being an excellent example of partnership development and was recognized as a leading best practice. The Panel also looked at several specific examples of local crime reduction initiatives and highlighted a specific Surrey project - the Mayor's Task Force on Crime and the "High Risk Location Initiative" (HRL), noting that this initiative focuses its efforts on targeting high-risk locations in the city with a coordinated approach among the Surrey RCMP, City By-laws, and Surrey Fire Services.

Surrey specific work in support of recommendations #1, 2 and 5, is the use of the former City Hall and the plan for this space to be occupied by a variety of tenants commencing in 2016. To date, the tenants have been identified as Crown Counsel, Surrey Community Corrections, the Deas Island Team and specific components of the Surrey RCMP detachment. Within this area of the City, which is now termed the Justice Precinct, we will see the establishment of an administrative centre designed to make services available in areas of justice, mental health, substance misuse and other social services for prolific and chronic offenders in Surrey. This process involves several components including the facilitation of the location for the Integrated Services Network ("ISN") office at the former City Hall Annex as well as neighbourhood intake locations, the establishment of co-operation and collaboration among partner agencies to ensure the provision of necessary supports for offenders, the selection and assignment of an administrative liaison for the ISN, the preparation of ISN Target Groups to be focused on various demographic profiles of offenders, as well as the process of securing funding for the ISN.

Surrey specific work in support of recommendation #1, 2 and 5, is the Surrey detachment Prolific Offender Management Program ("POM") which is well underway and in line with RCMP "E" Division's provincial program. POM is targeted and intensive offender surveillance via coordinated police and probation partnerships. These partnerships are also supported by an integrated team of service providers that deliver interventions tailored to specific offenders and include mental health supports, substance use treatment, as well as income assistance, employment and housing referrals.

Surrey specific work in support of recommendations 2, 5 and 6 is the RCMP's SMART project. In 2014, Surrey RCMP Officer in Charge ("OIC"), Chief Superintendent Bill Fordy, requested an analysis of the number and types of calls attended by police. After an analysis of thousands of calls for service it was learned that the majority were identified as social issues and not necessarily chargeable offences. From this analysis, Surrey Detachment embarked on a research journey to look at evidence-based, best practices utilized by other police agencies across Canada. While visiting police departments in Ontario, the Prince Albert Hub and the Rexdale Hub were identified as successful models of risk driven, collaborative community safety initiatives. As a result, the Surrey RCMP have championed an initiative called the Surrey Mobilization and Resiliency Table ("SMART") in an effort to effectively address developing community problems before they become police problems. SMART is a risk driven response model that works in collaboration with other human service providers to identify risks before incidents occur. This model (often called a "Hub") has successfully been established in other parts of Canada, mostly notably in Prince Albert, Saskatchewan and Branford and Rexdale, Ontario. These 'Hubs' meet weekly to identify those most at risk and seek collaborative interventions to prevent harm. It is a fiscally responsible and innovative response to long-standing social issues that the police are routinely viewed as owning.

In support of recommendation #3, and based on several key recommendations of the City's Crime Reduction Strategy, the City of Surrey funds a municipal support position within the RCMP that coordinates and delivers the Surrey RCMP Restorative Justice program. Established in 2008, this program continues to be a key component of youth intervention programs offered in the City.

In support of recommendation #4, a recent undertaking in which Surrey is a contributing partner is the development of a publication titled: Designing Out Crime: The Essential Principles of Community-Based Crime Reduction. This study will focus on the factors that society can focus on, and address in order to achieve both short and long term success in reducing and preventing crime. This book will provide a series of strategies that communities, cities, and governments can implement to not only more effectively respond to crime, but to reduce and prevent crime in the first instance, as well as for the long term. This effort is of direct relevance to crime prevention efforts in Surrey, with applicability to other communities in BC. The study will be published by the end of this year.

In terms of the City's work on the emerging themes that were highlighted by the Blue Ribbon Panel, the City facilitates work which brings together collective efforts to address the issue of domestic violence, as well as the needs and services for vulnerable women and girls. As well, the City's efforts in the development of a strategy to support aboriginal populations are well underway.

2015 Provincial Updates

On September 25, 2015, the BC Government announced a $5-million investment over the next two years to enhance community safety with projects that will build success by addressing the following three priority areas:

- Targeting prolific, violent and gang-affiliated offenders.
- Getting tough on the roots of crime through education and outreach.
- Strengthening safety for First Nation communities and vulnerable women.

It is expected, that as this investment rolls out over the next two years, some of the specific programs the Province is exploring include a gang-exit program, increased investments in education and outreach projects focused on at-risk and Aboriginal youth, and community-focused crime prevention.

To further address crime, the Province is also planning to launch a regional, integrated community safety pilot project which will bring together local government and non-government agencies. To date this has not yet been named or formalized. Through this pilot, the Province is planning to prioritize community safety goals, focus resources and programs accordingly, and measure and evaluate the outcomes.

SUSTAINABILITY CONSIDERATIONS

The Provincial Blue Ribbon Panel supports overall objectives of the City's Sustainability Charter specifically, creating a safe and secure environment for the City's residents, businesses and

visitors. The priorities and objectives outlined in the framework are well aligned with the following Charter action items:

- SC5: Plan for the Social Well-Being of Surrey Residents
- SC11: Public Safety and Security; and
- SC17: Crime Reduction Strategy

CONCLUSION

The recommendations of the B.C. Blue Ribbon Panel on Crime Reduction are considered to be broad and far-reaching with an overall focus on offenders given that a small number of offenders are responsible for a disproportionate share of crime taking place in communities across B.C. As such, the Blue Ribbon panel recommended that the Province develop a comprehensive, evidence-based model for dealing with prolific and priority offenders across the justice and public safety sector in sentencing, managing, rehabilitating, supervising and supporting them to change their behaviour, desist from crime and to ensure they could successfully reintegrate into society. We will continue to implement our programs within the context of the Blue Ribbon panel recommendations.

Colleen Kerr
Crime Reduction Strategy Manager

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Appendix "I" - A Criminal Justice System for the 21st Century
Appendix "II" - Province's White Paper Part Two: A Timely and Balanced Justice System
Appendix "III" B.C. Policing and Community Safety Plan
Appendix "IV" - Getting Serious About Crime Reduction – Report of the Blue Ribbon Panel on Crime Reduction

BC JUSTICE REFORM INITIATIVE

A CRIMINAL JUSTICE SYSTEM FOR THE 21ST CENTURY

Final Report to the Minister of Justice and Attorney General Honourable Shirley Bond

D. Geoffrey Cowper QC, Chair
BC Justice Reform Initiative
August 27, 2012

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BC JUSTICE REFORM INITIATIVE

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Honourable Shirley Bond
Minister of Justice and Attorney General
PO BOX 9044 Stn Prov Govt
Victoria British Columbia V8W 9E2

Dear Madam Minister and Attorney,

Final Report of the Chair of the BC Justice Reform Initiative

I am pleased to deliver this final report to you in accordance with the February 2012 terms of reference for the BC Justice Reform Initiative.

Thank you for the opportunity to review the criminal justice system in British Columbia over the past six months. The system faces great challenges, but I believe a great deal of progress is being made in our understanding of what can and should be done to improve its performance.

This report has focused on changes that will improve the operation of the system as a whole and enable us to better achieve the ends of criminal justice: safe communities and a fair and just system. I hope the report advances this ongoing conversation and encourages those responsible to make changes that will set us on the path to better serving the people of British Columbia.

Yours truly,

Geoffrey Cowper QC
Chair, BC Justice Reform Initiative

Alison MacPhail, Project Adviser
Jennifer Chan, Director of Research
Emma Dear, Executive Director

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1. INTRODUCTION AND EXECUTIVE SUMMARY

Our criminal justice system is ready for systematic and wide-ranging change in the way it operates and how it achieves its goals. The threads of wide-ranging reform proposals have already been spun and are in various states of development. When properly gathered, these threads of reform can be knit together into a system that will more fully deserve our pride and support.

The best thinking within our justice community offers improved protection for the community and justice for the accused, the victim and the community. It also addresses the prevention of crime and the restoration of offenders to fulfilling, valued lives. Knitting together the best proposals and models will result in a well-managed system that will effectively achieve both improved public safety and fairness, a system that will respond to the dynamic changes in criminal conduct and that will operate with transparency and accountability.

Transparency is critical, not only so that the public understands what the justice system is doing, but also so that those working in the system can better understand the impact of what they do. In the course of the consultations for this review, I was struck by the number of times people referred to their own experience of the criminal justice system rather than to data about the system as a whole. While experience is vital to understanding data, data is essential to supplement experience. Information about how the system a whole is functioning needs to be supplemented by information about individual offices and court locations, so that good practices can be identified and expanded while poor practices can be addressed.

Many ideas for reform have been suggested, and these fall across the entire system. They include a province-wide crime reduction plan, enhancement of early resolution of criminal cases, reduction of delays and backlogged cases, improved use of data for planning and management, a major revision to how prosecutors handle cases, and improving the relationship with the public. Some of these proposals would affect all cases, while others focus on particular categories of cases, such as domestic violence, administration of justice offences, and offenders who suffer from mental illness or are addicted to substance abuse.

These ideas demonstrate that the leaders of the justice system recognize the need for systemic—and not just incremental—change.

These proposals are a fresh demonstration of the professionalism and determination of those who serve the public interest in British Columbia's justice system. Despite this, the concerns underlying the *Green Paper*[1] are very real. Frustration and anxiety have coloured many of the consultations. There is a general sense of frustration that previous reforms have not succeeded at delivering enduring change. Some have expressed frustration that worthwhile initiatives lie abandoned. There is an ongoing concern that there are persistent barriers within the legal culture to accomplishing substantial change. Committees, working groups and similar bodies have been created to bridge the independence of justice participants, but they appear to have largely failed to achieve sufficient coordination, and there is little evidence of true collaboration. Finally, there is a general sense of frustration and anxiety that there is not enough money, compounded by the obvious context that we are in a time of fiscal restraint and competing demands on public resources, which has no appearance of changing in the foreseeable future.

1 British Columbia Minister of Justice and Attorney General, *Modernising British Columbia's Justice System: Green Paper* (February 2012), online: British Columbia Ministry of Justice <www.ag.gov.bc.ca/public/JusticeSystemReviewGreenPaper.pdf>.

How can we be assured these reforms will provide enduring improvement?

In order to assure the public that these proposals will succeed and produce enduring change, I have concluded that a new means must be developed to overcome the fact that institutional independence can lead to silo thinking and approaches, even though everyone acknowledges their success is dependent on the co-operation of others within the system. Many of the previous disappointments in strategy or execution in criminal justice reform can be attributed to a failure to overcome these silos. I applaud the energy and commitment that has fuelled these deserving proposals, but more is needed.

What is fundamentally needed is a clear vision for the justice system as a whole, a true systems approach to reform and project management discipline across the board. This means at the start that there must be clear and accepted goals, disciplined execution, and clear performance measures that are monitored and evaluated.

We cannot expect project management discipline without equipping those responsible with the means and human resources to execute the plan. There must be clarity on where primary responsibility lies for any particular process. Lawyers or judges responsible for a complex project will likely need non-legal project management expertise. To avoid any suggestion of interference with judicial independence, this may mean the judiciary needs to have professional project managers working for them directly in areas related to judicial administration.

To overcome the problems related to institutional isolation, I recommend that the management of these interdependent processes take place under the oversight of a new cross-sectoral organization, which I propose be established within the Ministry of Justice, and which could be called the Criminal Justice and Public Safety Council (the Council). It would be responsible for the development of the overall strategy for the criminal justice system in British Columbia, ensuring the effective collaboration and coordination of the various participants within the system and providing transparency and accountability to the public.

Underpinning all of my recommendations for reform is a recognition of the fundamental importance of timeliness in the criminal justice process.

Timeliness is a critical goal that can and must be achieved. The Supreme Court of Canada discussed in *R. v. Askov* the importance of timeliness in the criminal justice system, as summarised here:

> The primary aim of s. 11(b) is to protect the individual's rights and to protect fundamental justice for the accused. A community or societal interest, however, is implicit in the section in that it ensures, first, that law breakers are brought to trial and dealt with according to the law and, second, that those on trial are treated fairly and justly. A quick resolution of the charges also has important practical benefits, since memories fade with time, and witnesses may move, become ill or die. Victims, too, have a special interest in having criminal trials take place within a reasonable time, and all members of the community are entitled to see that the justice system works fairly, efficiently and with reasonable dispatch. The failure of the justice system to do so inevitably leads to community frustration with the judicial system and eventually to a feeling of contempt for court procedures.[2]

Timeliness is fundamental to all aspects of a fair and effective criminal justice process which enjoys the confidence of the public and respects the rights and interests of all those affected by crime. During

2 *R. v. Askov*, [1990] 2 SCR 1199, head note per Cory J, online: Supreme Court of Canada <http://scc.lexum.org/en/1990/1990scr2-1199/1990scr2-1199.html>. See "Purpose of s. 11(b)" at pp. 24–28 for the Court's detailed discussion.

consultations, all the professionals were confident positive changes would accrue if timeliness were achieved. Most importantly, these improvements would improve both the fairness of the system and public safety. Fewer cases would have to be stayed by the prosecution due to the loss of evidence or other problems associated with delay. Judicial stays of proceeding based on the *Askov* standard would be eliminated. Prosecutors will immediately assess the case and the appropriate sentence. Accused persons would decide how to respond to the charges, knowing that a trial date can be made available in the near future. The consequences of being refused bail pending trial will be less serious. Conditions for release into the community would only restrict an accused's liberty for a reasonable length of time. The very high volume of charges for breaches of conditions now being experienced should be substantially reduced. Victims will see their complaints dealt with in a reasonable time, while the communities will see serious crimes investigated and those implicated brought to justice.

1.1 EXECUTIVE SUMMARY

The purpose of the criminal law is to promote respect for the law and the maintenance of a just, peaceful and safe society. There are wonderful and inspiring elements to our justice system. Our trial system fundamentally does a sound job in upholding the rule of law in fairly determining guilt or innocence.

The criminal justice system is, however, failing to meet the public's expectations of a modern justice system in several respects, most importantly:

1. There is no integrated, province-wide plan for improving public safety;
2. Modern methods of management and administration, including modern information and communication systems, have not been incorporated into how the system is managed and how it presents itself to the public; and
3. The system fails to meet the public's reasonable expectations of timeliness.

1.1.1 Overview of the Criminal Justice System in British Columbia

The overall crime rate in British Columbia has been decreasing for some time, though there is room for improvement, since British Columbia's crime rate remains higher than the Canadian average. The youth crime rate, and particularly the number of incarcerated youth, has dropped dramatically over the past ten years.

The approach to policing and corrections practice has been dramatically transformed over the past twenty years—in particular, proactive policing strategies have focused on particular types of offences or offenders. These programs develop strategies to prevent crime or apprehend the offender based on an analysis of why certain crimes are committed or why certain criminals commit crime.

Corrections practice has for a long time been focused on an evidence-based analysis of the risk represented by a particular offender, and has the highest expertise in assessing the true correlates of risk to the community represented by a particular person and how that risk may be reduced by programs such as anger management or addiction counselling.

Over 98% of almost 100,000 criminal cases a year are dealt with by the Provincial Court. Almost all the cases filed in the Provincial Court are resolved without a trial—in fact, less than 2% of cases proceed to a full trial.

The Supreme Court of British Columbia, which held approximately 450 criminal trials last year, receives the most serious criminal offences, such as murder.

The number of cases in the Provincial Court has remained stable until recently, but dropped significantly in 2011/2012. The backlog was slowly being reduced until last year, but there was a substantial drop in 2011/12, and the volume of pending cases is now at the level it was in the early 1990s. The recent drop in new cases seems largely due to the diversion of impaired drivers out of the criminal system and into the Immediate Roadside Prohibition (IRP) program.

The volume of administration of justice offences for breaching the terms of release into the community or as a condition of sentence has significantly increased

over the decade. These cases now represent 40% of all the new cases in the system.

Although the caseload in Provincial Court has been decreasing, cases are still taking too long to get to trial. In general the time to trial for short criminal cases in the Provincial Court is longer than the performance measures set by the court.

The time to trial and length of trial in the Supreme Court both appear to be on the rise; the Court is struggling to effectively manage several very large and complex criminal cases.

1.1.2 A Criminal Justice System for the 21st Century

Over a decade ago Chief Judge Metzger expressed concern over what he termed the "culture of delay" in the criminal justice system. In my respectful view the facts show that such a culture remains today. To change this culture we must acknowledge both why it has proven so resistant to change and identify what is necessary to make timeliness possible.

Timeliness is perhaps the most obvious way in which the legal culture fails to understand or respond to the general public—despite the fact that lawyers and judges alike recognize the advantages of a timely system.

The culture of delay in the court system is resistant to change because there are several benefits to those working within the system that are gained from delay and no accepted means of enforcing timeliness as a priority. To change this culture we must fundamentally change the incentives that apply to the parties and provide the right tools to the right participants to make timeliness a necessity and not an option.

During the review there was a general sense that judges and lawyers have their own, insulated sense of what constitutes timeliness and responsiveness. The fact that the progress of a case is broken down into several different subsystems, many of which do not have clear or enforced deadlines, means that the public is often mystified about whether there is any attempt at timeliness—despite there being some settled measures that are in some cases made public. The public cares about how long a case takes from the initial event until its resolution. The system does not track or report to the public on this measure of performance by the system. To add to the tension around this issue, the public judges the system on its exceptional cases. Even a small number of cases that take an unconscionable amount of time will frame the public perception that such delay is tolerated.

Finally, the public no longer accepts the etiquette and professional understandings that frequently interfere with timeliness in our system. Frequent adjournments, cases which run on, the absence of a date when a result will be known, the seeming absence of any correcting mechanism when cases become bogged down—all frustrate victims, witnesses, the community and, on some occasions, the accused.

There also remains a sense in the public and even among informed observers that the goals for timeliness we set within the system are modest, are not taken terribly seriously, and exceed what the general public would consider reasonable. To help achieve real timeliness, new standards and expectations are required, as well as new structures to help them be achieved.

1.1.3 Judicial Independence

The rule of law requires that we have a truly independent judiciary. Judicial independence includes those administrative decisions that bear directly and immediately on the exercise of the judicial function.

There are important potential areas of reform that relate to matters that fall squarely within judicial independence, such as judicial case assignments and trial management.

There are also other areas, such as general court administration, where the executive branch of government and the judiciary must depend on one another to fully discharge the public interest. There are also areas of the system where judicial independence is not engaged. Even in areas of exclusive authority, a successful justice system will require collaboration and coordination between the judiciary and executive branches of government.

Successful reform will not be achieved by greater clarity over the boundaries between areas of exclusive or shared judicial or executive authority, and absolute clarity is not available on the basis of the jurisprudence. Clarity is also not necessary to achieve the reforms that have been identified, particularly in light of the important reforms under development with the agreement and active leadership of the judiciary.

The importance of regular communication and collaboration between the judiciary and the executive should be recognized through the statutory establishment of a Justice Summit, including the Chief Justices, the Chief Judge and senior executives from the Ministry of Justice.

1.1.4 Criminal Justice and Public Safety Council

Previous efforts to reform criminal case process have been disappointing. In my view their failures occurred for primarily two reasons: the failure to successfully collaborate with other justice participants in framing the reform, and the failure to ensure that needed changes would work across the system. There are many worthwhile proposals which will be reviewed and recommended, but success will depend greatly on effective collaboration in the detailed planning and introduction of new reforms.

To this end I have concluded that the Ministry of Justice should be reformed so as to better carry out these fundamental needs for system-wide planning, collaboration and discipline.

In this report I recommend the establishment of the Council within the Ministry of Justice. It will be responsible for:

- A Criminal Justice and Public Safety Plan for British Columbia (the plan);
- Coordination of efforts by the justice participants generally, and particularly for specific multi-sectoral projects;
- Recommendations to the Minister of Justice concerning the allocation of resources across the system; and
- Management of system data and oversight of reports to the public on performance of the system.

A body which focuses on the interface between the independent participants in the system and can influence the allocation of resources has been missing to date. The Council will be able to speak across the sector, hold participants responsible, and husband and capture savings for the system.

I would expect the Council to be the strategic manager of the governmental aspects of the criminal justice system. It would establish concrete timelines for the management of the criminal cases going through the system, and it would collaborate with the various justice participants to ensure their execution is coordinated and that their separate performance measures are compatible, monitored and reported on. There will doubtless be problems that arise, and unforeseen difficulties encountered; the Council should be a common meeting place of senior justice leaders for the airing and resolution of these concerns, and an effective means by which direction can be determined and obstacles overcome.

1.1.5 The Role of Data and Transparency

All the justice participants are becoming accustomed to the application of modern business process analysis and business intelligence. There have been substantial and sustained investments in technology that have produced substantial assets in data systems, and a fuller understanding of the system—for example, the five-year program to develop a complex simulation model with the Simon Fraser University (SFU) Complex Systems Modelling group. The provision of accurate information about the functioning of the criminal justice system, broken down by individual office and court location, is indispensable to a properly managed justice system and vital to creating an informed discussion about how to achieve the necessary reforms.

Thus the Ministry is just starting to incorporate business systems analysis and discipline. The Provincial Court has already obtained business consultancy advice respecting its reform considerations and intends to use a similar advisory service to help finalize any new model. Police forces have contracted business-process systems analysts to help refine

their processes. The Legal Services Society (LSS) has an advanced technology platform to manage legal aid and intends to develop a new complex case management platform. Defence counsel have become familiar with terabytes of disclosure and modern database management. The information and business intelligence revolution may have come late to the justice system, but it has definitely arrived.

These developments provide a substantial reason to expect that the various proposals for reform will be well organized, capable of being executed with discipline and able to provide enduring change.

This also means that more and more information is available for public distribution—which has increased the public's expectation for transparency in both the operation of and outcomes achieved by the criminal justice system. Recent developments in making data such as the BC Dashboard available to the public demonstrate that the facility exists. The data made available to this review offer more insight into the actual operation of the system than previously released publicly, and this in my view is an irreversible process. As a result, the metrics for success need to be set at levels the public will accept as reasonable, and systems need to be in place to report on progress so as to be accountable for the expenditure of public funds and to ensure that the public has the opportunity to be well informed.

1.1.6 Crime Prevention and Investigation

In many ways the development of proactive policing strategies over the past 20 years is a remarkable success story. What is clear is that the public supports these new approaches to crime prevention and reduction and expects that the system as a whole will perform in ways that are complementary to the fundamentals of public safety.

The BC Association of Chiefs of Police (BCACP) has recommended that a province-wide crime reduction plan be developed, and this has obvious advantages that should be acted upon in concert with the other improvements recommended in this report. During consultations the complex reality of overlapping policing jurisdictions and the mobility of both criminals and crime supported the development of such a plan. Furthermore, the scaling of success from one location to another and the evaluation that has become routine for police forces should now be applied to the province as a whole.

1.1.7 Early Case Resolution

Justice leaders have long sought to find ways to promote early case resolutions to achieve efficiencies and better match resources with demand for professional and judicial services. Almost all cases are in fact resolved by guilty plea or stay of proceeding, yet the system is still organized based on the assumption that all cases will proceed to trial.

The current rules were the result of a wholesale change made over a decade ago to involve judges more actively in the pre-trial phase of proceedings to encourage early resolutions and reduce the high proportion of cases that collapse on the first day of trial. Despite the best of intentions, judges, prosecutors and defence counsel were not able to create the conditions for early resolution. Neither prosecutors nor defence counsel changed their practices in order to realize the potential of the new rules.

There are several reasons why this would be the case, but it is both timely and necessary to revisit the approach to the pre-trial resolution of cases.

I agree with the sentiment expressed by some stakeholders during consultations that administrative appearances within the system are effectively "bring forward" reminders for prosecutors and defence counsel alike, and that the court has limited impact in obtaining early resolutions.

The chief result of this analysis is that responsibility for pre-trial resolutions needs to be firmly relocated and invested in the parties. The prosecution service of course has the principal obligation to advance the case, and to persuade the defence of the reasonableness of any proposed resolution. Defence counsel must have a real opportunity to access and seek to persuade the responsible prosecutor that a charge is unlikely to succeed and should be withdrawn or amended.

The professional incentives to enable this to occur are not in place, but proposals from the prosecution

service and LSS will go a long way towards achieving early case resolution. The prosecution service has proposed a number of important changes to the way in which they manage cases to obtain early resolution. Perhaps most importantly, a proposed change in case assignment will assign cases to specific prosecutors, thus enhancing "file ownership." When a prosecutor is responsible for a case throughout its life, that prosecutor will then have both the opportunity and responsibility to seek resolutions in appropriate cases, and to take matters to trial when that is necessary.

LSS has proposed further enhancements to legal aid services to help achieve early principled resolutions, specifically: assigning duty counsel to the same court on a continuing basis to permit them to retain conduct of matters which can be resolved in a reasonable period of time, and changes to the legal aid tariff to facilitate the availability of legal assistance in disposition courts. As well, it would be beneficial if advice services could be funded very early in the process (i.e. pre-charge) to advise an accused as to the potential or actual charges, and their best options for resolution or obtaining counsel for the case.

I am confident that the complementary proposals advanced by the prosecution service and legal aid will make it possible for resolutions to occur earlier and on a principled basis. It will of course be fundamental to success that members of the Bar engaged in defence work be consulted regarding the information they need to advise their clients as to what is in their best interests. The criminal bar in British Columbia benefits from generally good relationships between prosecution and defence. This goodwill must now be developed in a different fashion and forge new means of communication and negotiation outside of court hearings. Similarly, the already challenging task of dealing with self-represented litigants will need to be addressed in this new procedural setting.

Moving responsibility for early resolution out of the courtroom is a systemic change that, if successful, will produce a more effective resolution culture that will better serve victims, the community and accused persons. This shift will require the development of new timelines and procedures, but should also enable greater innovation around pre-charge resolution. Many prosecutors and defence counsel identified the need to facilitate early and substantive discussions based on adequate but not perfect disclosure, with clear and appropriate incentives for an accused to plead guilty early rather than late, and for a prosecutor to be realistic in the first instance about the chances of conviction and sentence.

1.1.8 Pre-Trial and Trial

The fundamental inefficiency that has long plagued trial scheduling and trial processing in Provincial Court has been a high collapse rate on the first day of trial. Only a minority of cases are ever assigned a trial date, and only a minority of those cases ever proceed to trial. Of the 4.5% of all charges that have a trial date scheduled, 70% of them collapse at the outset of trial by reason of stays of proceedings (approximately 15%), guilty pleas (approximately 40%) and a variety of other causes. The collapse rate is influenced by the absence of incentives on the part of the accused to plead guilty earlier in the process, and the inevitable last-minute realization by some accused that the case against them will be proven by witnesses who are present and ready to proceed. Similarly, since the natural administrative response is to schedule several cases for the same courtroom, prosecutors have an incentive to reconsider the strength of their case and, because witnesses have failed to appear or because of other last-minute changes, cases can become clearly unprovable.

The Provincial Court Process and Scheduling Project (Court Scheduling Project) described in Schedule 5 is intended to adapt successful initiatives from Manitoba, Saskatchewan and Alberta that have improved judicial utilization, although without having a marked effect on collapsed cases. The collapse rate naturally varies from day to day and from place to place, meaning that there is often a poor alignment between available judicial time and cases ready for trial. As a result there continues to be a significant under-utilization of available judicial time. From the

work carried out by the review, it appears clear that significantly increasing effective judicial utilization would contribute to the elimination of the backlog and a dramatically shorter time to trial.

The Court Scheduling Project may use an Urban Fare rather than Safeway approach to courtrooms.[3] In multiple courtroom locations, an assignment court receives all the trials for a particular courthouse and those cases are then selected and assigned courtrooms based on their availability for trial.

One hoped-for function of the new scheduling process may be that much earlier trial dates are able to be set. In my view a dramatically more ambitious approach to setting trial dates within a very short time after arraignment offers the greatest potential to reduce the collapse rate, as well as to address the concerns associated with a lack of timeliness.

The Court Scheduling Project, coupled with early trial dates, offers a real opportunity for improvements to the effective use of available judicial resources. Resources should be focused on enabling this process to be finalized and implemented as soon as possible. Pending the detailed development and introduction of this system, resources should be immediately marshalled and focused on reducing the backlog of cases.

1.1.9 Role for Risk Assessment

BC Corrections can contribute its developed expertise and understanding of risk to the public and opportunities for rehabilitation more generally across the system. This should be facilitated under the direction of the Council.

Corrections has proposed that they share their expertise with the other sectors through training and education. While this would be the least expensive way of sharing their expertise, I am concerned that it may not be sufficiently effective. Subject to being able to make additional resources available, I recommend that consideration be given to identifying ways in which corrections expertise could be used directly to inform early release decisions, the use of alternative measures, and those cases which would benefit from a pre-sentence report.

1.1.10 Provincial Court Reform

Leaders of the Provincial Court have advanced farsighted and significant reforms over the past 15 years. These proposals and initiatives have included rules to promote early resolutions, the reduction of backlogs, the development of public performance measures for the Court, the development of problem-solving and specialized courts such as the Downtown Community Court (DCC) and the Victoria Integrated Court (VIC), and the development of a vision and mission statement for the Court. As discussed, the current leadership of the Court has identified that a new approach to criminal process and trial scheduling is necessary. To better enable the Provincial Court to fulfil its important role, I recommend changes to the ways in which its judicial complement are determined and enhancements to its governance and managerial capacity.

I recommend that there be a definite judicial complement based on the best available evidence of the current and expected workload of the Court. This process needs to be founded on accepted measures of judicial utilization, effectiveness and anticipated workload and adjusted to account for changes resulting from efficiencies or improved service to the public. Such an approach should reduce the tension between the Court and the government, and enable both to focus on the challenges at hand. The complement can then be reviewed on the basis of objective factors on a regular period of three to four years.

The Provincial Court's capacity to expertly manage its court, including use of modern information and communication systems, modern business process analysis and other modern management techniques should be enhanced through a more clear and modern governance structure within

3 The check out at Urban Fare aggregates all customers into one line-up for several cashiers, whereas Safeway generally uses several line-ups before individual cashiers.

the court. The Canadian Association of Provincial Court Judges' suggestions of clarification of the managerial role of the Chief Judge is a good one. It is also recommended that consideration be given to statutory recognition of a role for the management and executive committee of the Court, to enable the institutional independence of the court to be exercised in a more clear and effective manner.

1.1.11 Criminal Justice Branch and Charge Approval

The approval of charges is made by the prosecution service on the basis, principally, of a report to Crown counsel (RCC) by police officers. The government commissioned an independent review of this arrangement to consider whether police officers should be permitted to bring charges themselves. Gary McCuaig, QC, delivered a report (attached as Schedule 11 to this report) that recommends not changing the charge approval standard or moving the charge approval function to police. I agree with that recommendation. From a systems perspective the approval of charges by police would create unhelpful duplication of effort and would result in a far higher level of stays of proceedings.

In my view police concerns over the charge approval procedure and standard stem from a general concern over the absence of common goals and strategies to improve public safety. That underlying concern needs to be addressed, but I do not accept that a change to the charge approval process would alleviate the underlying frustration felt by police officers with the criminal legal system.

In response to the concerns raised in the *Green Paper*, the Criminal Justice Branch, developed a suite of proposals described in Schedule 6 to this report for reforming key elements of how they do business and perhaps more than any other justice institution, showed a clear determination to pursue improvements in their process without delay. These are an impressive collection of proposals that have scope, insight and, for the most part, reflect modern notions of systems management to improve the effectiveness of the system.

1.1.12 The Role of the Public

Achieving better performance will help the relationship between the criminal justice system and the public.

In the consultations two things became clear: victims, witnesses and the community are concerned not only with their own case but with the criminal justice system's performance as a whole, and better means must be found to allow them to express and contribute to the criminal justice system's ongoing review of its service.

Much progress has been made through technology in providing access to the public for such things as notable judgments, the scheduling of cases, and case status online in the courthouses. The criminal justice system can better exploit technology, and particularly electronic communications, to coordinate witnesses, schedules and cases.

1.1.13 Particular Issues

During the consultations particular issues arose time and again. These concerned principally the system's handling of domestic violence cases, the handling of administration of justice offences, and the use of restorative justice methods to complement the work of the court system. Some important issues, such as First Nations and the specific challenges raised by mental illness and substance addiction, could not be explored in sufficient detail in the time available.

Domestic violence needs a well-considered plan to improve safety for intimate partners and their children, one that is grounded in the best available evidence and results from recent initiatives. There is a legitimate controversy surrounding the current handling of these cases. In the course of developing a strategic plan to reduce domestic violence in the province, the broad scope of disagreement in the community should be addressed on the basis of the best evidence available from the new Provincial Office of Domestic Violence.

Administration of justice offences need an integrated, collaborative approach that includes the participation of police, corrections, prosecutors, defence counsel and judges. All participants need

to share insights as to how the terms of release are understood by the accused, what is and is not working with respect to terms, how best to address breaches, and whether current practices are or are not serving any general goal. These insights should inform the development of best practices in the interests of improving public safety and also permitting, where appropriate, accused persons to live in the community subject to conditions on their actions.

1.1.14 Resources and Priorities

Resourcing decisions within the justice system have produced some notable variations in funding bills over the recent past. Expenditures for policing services have increased significantly. Expenditures for prosecutors and the courts have increased, but principally they have been used to fund salary and benefit increases and not increases in capacity.

As a result of the government's core services review several years ago, non-governmental organizations had substantial cuts made to their funding. In my view it is critical that resources to non-governmental organizations be made available where doing so is important to the effective performance of the system. In some senses, they are part of the system and need to be treated as such.

Legal aid has been under constraint since the mid-1990s, and apart from large case funding, has received very little incremental funding. Despite this it has actively led in producing innovative programs and services. The submissions which touched on resources almost universally called for priority to increases in legal aid funding. In my view, in order for legal aid to play an active and necessary role in the achievement of Provincial Court reforms, incremental legal aid resources would be money well spent.

The Provincial Court has suggested that in order to bring about a reduction in the backlog of cases and to keep pace with the work in the system, approximately 18 new judicial appointments should be made. In my view, the evidence respecting judicial utilization and the recent declines in caseload do not support a general increase in judicial complement.

However, the project started by the Court and proposals by other justice participants, and in this Report, will have implications for judicial complement that should be addressed. In particular, I agree with the Court's suggestion that the appointment of five judges would add to the immediate capacity and enable an aggressive reduction of the case backload. There may also be particular regional needs for appointments.

2. LIST OF RECOMMENDATIONS

2.1 CRIMINAL JUSTICE AND PUBLIC SAFETY COUNCIL (SECTION 7)

- A Criminal Justice and Public Safety Council should be established within the Ministry of Justice and Attorney General.
- The Criminal Justice and Public Safety Council should include the senior leaders of the Ministry, assisted by a secretariat.
- The Criminal Justice and Public Safety Council should have responsibility for overall management of the criminal justice system, including preparing, under the direction of the Minister and in consultation with other justice participants, a Criminal Justice and Public Safety Plan for the province. The plan should also include
    - A recognition that all of the criminal justice sectors have responsibility for achieving the overall goals of the justice system of both public safety and justice;
    - A recognition that timeliness is fundamental to both public safety and justice;
    - System-wide performance measures for timeliness based on the interval from the reporting of a complaint until its resolution. Each sector in addition will need to frame targets within this overall framework; and
    - The development of performance measures for the criminal justice system as a whole.
- The Criminal Justice and Public Safety Council should also have responsibility for
    - Oversight of multi-sectoral initiatives; and
    - Public reporting on criminal justice data and progress reports.
- A Justice Summit including all levels of court and justice system leaders should be created by statute as a means to facilitate collaboration among all justice participants, to consider progress in the process of reform, and to discuss changes in direction or new initiatives.

2.1.1 Secretariat

- The Criminal Justice and Public Safety Council should be supported by a secretariat to assist in the development of the Criminal Justice and Public Safety Plan, as well as the development of appropriate performance measures and generally carrying out directions of the Criminal Justice and Public Safety Council.
- The secretariat should include responsibility for criminal justice policy as well as project management expertise to improve the rigour with which projects endorsed by the Criminal Justice and Public Safety Council are implemented.
- The secretariat should have an advisory board with independent academic or outside expert representation, as well as police, victim and broader public representation.

2.2 THE ROLE OF DATA AND TRANSPARENCY (SECTION 8)

- The Criminal Justice and Public Safety Council secretariat should be responsible for the acquisition, analysis and reporting of criminal justice data.
- The secretariat should establish methods to systematically gather data respecting performance measures and other useful data which can be regularly reported on and featured as part of the Criminal Justice and Public Safety Council's annual report.
- The Ministry should distribute key business intelligence information, related to both the strategic system goals as well as branch-specific goals, to local professionals and staff and encourage discussion and debate on the information.

2.3 CRIME PREVENTION AND INVESTIGATION (SECTION 9)

- A province-wide crime reduction plan should be developed under the direction of the BC Association of Chiefs of Police in collaboration with the Criminal Justice and Public Safety Council.
- Statistics Canada should be asked to increase the frequency of the General Social Survey to better understand trends in self-reported victimization that are particular to British Columbia, and the survey should provide information respecting regional and cultural concerns as well as particular offences.
- A province-wide plan for diversion, including restorative justice, should be developed to include education, quality assurance and control, performance measures, reporting, and evaluation.

2.4 EARLY RESOLUTION (SECTION 10)

- A new approach to pre-charge resolution should be taken that maximizes the opportunity to resolve matters before formal charge approval is complete.
- An abbreviated report to Crown counsel form should be considered for appropriate cases by the Police/Prosecution Liaison Committee in consultation with Legal Services Society and the defence bar.
- The prosecution service should adopt file ownership as the default administrative process for the handling of criminal matters.
- The Legal Services Society should be supported to provide legal services to promote early resolution by
    - Assigning duty counsel to the same court on a continuing basis;
    - Changing the legal aid tariff to facilitate legal assistance in disposition courts; and
    - Providing advice and other services pre-charge to facilitate resolution at that point.
- Police should advise all persons who are given a notice to appear in court on a future date of the possible availability of legal assistance and how to access it.

2.5 PRE-TRIAL AND TRIAL (SECTION 11)

- The Criminal Justice and Public Safety Council should support initiatives to
    - Create timelines for early resolutions;
    - Implement the Provincial Court Process and Scheduling Project;
    - Substantially reduce the time to trial; and
    - Reduce the current case backlog to bring all pending cases into compliance with the new standards being developed by the Provincial Court.
- Broader use of judicial justices should be considered by the Provincial Court for the hearing of all preliminary inquiries and expansion of their use for bail applications.
- The Supreme Court Criminal Committee should be resourced to retain project management expertise to assist in developing best practices in pre-trial and trial management.

2.6 ROLE FOR RISK ASSESSMENT AND BEHAVIOUR MANAGEMENT (SECTION 12)

- The BC Corrections proposal outlined in Schedule 8 to educate and inform other justice participants of best practices in the assessment of risk should be implemented, and subject to resources, consideration should also be given to enhancing the role of corrections staff in providing relevant advice on risk and behaviour management in relation to release and sentencing decisions and conditions.

2.7 PROVINCIAL COURT REFORM (SECTION 13)

- In consultation with the Provincial Court, the Provincial Court Act should be amended to

- Clarify and affirm the role, powers and duties of the Chief Judge and amend the term of office to seven years;
- Recognize and clarify the role of the Executive Committee and the Management Committee of the Provincial Court;
- Provide for a specific judicial complement, subject to review every three to five years;
- Permit the attorney general to refer questions concerning judicial administration to the Court; and
- Provide for a professional judicial administration officer with a defined role and responsibility.

- The Court should establish a voluntary Advisory Committee on Judicial Administration, including people with expertise in private and public management.

2.8 CRIMINAL JUSTICE BRANCH (SECTION 14)

- The Criminal Justice Branch Reform initiatives in Schedule 6 should be implemented.
- The charge approval function and responsibility should remain with the prosecution service.

2.9 THE ROLE OF THE PUBLIC (SECTION 15)

- In order to improve transparency of Provincial Court processes, consideration should be given to
  - Providing a Web-based service to remind subscribers of developments and resolutions in particular cases; and
  - Providing online and courthouse user surveys that focus on service standards and ideas for improvement.
- Improved scheduling of witnesses via modern information technology should be considered.
- Victims should receive online exit surveys after the resolution of a complaint.

2.10 PARTICULAR ISSUES (SECTION 16)

2.10.1 Domestic Violence

- The new Provincial Office of Domestic Violence, working collaboratively with the Criminal Justice and Public Safety Council, should prepare a plan to reduce domestic violence, including an integrated and cross-sectoral approach that includes an informed role for the victim, diversion if appropriate, and early resolution, timely hearings, innovative sentencing, and transparency in the goals and progress towards achievement.

2.10.2 Administration of Justice Offences

- An administration of justice Offence cross-sectoral working group should be established (under the direction of the Criminal Justice and Public Safety Council) to
  - Better understand the trends and outcomes of administration of justice offences;
  - Identify best practices for determining the terms of release into the community pending trial, and the best practices in enforcement and supervision of those conditions, with the goal of achieving the best outcomes for the victim, the community and the offender; and
  - Develop a pilot to test the strategies.

2.10.3 Mental Health and Addiction

- New approaches such as that taken by the Victoria Integrated Court should be fully evaluated to determine whether they improve outcomes for offenders with mental illness and addictions, so that they can be considered for broader implementation.

2.10.4 Restorative Justice

- The Criminal Justice and Public Safety Plan for the Province should include a performance goal for increased use of restorative justice programs.
- Expanded funding for restorative justice programs should be made available, and innovative methods of funding, such as funding referrals, should be assessed in cases where

the offender would otherwise be subject to a significant criminal penalty.

2.11 RESOURCES AND PRIORITIES (SECTION 17)

- No recommendation is made as to the general level of funding for the criminal justice system.
- Within the scope of available funding, priority should be considered for reducing the backload of cases, enhancing the managerial capacity of the courts, and enabling the full realization of the early case-resolution process.
- To enable the aggressive resolution of the backlog of cases, an additional five judges should be appointed to the Provincial Court.

3. OVERVIEW OF THE CRIMINAL JUSTICE SYSTEM IN BC

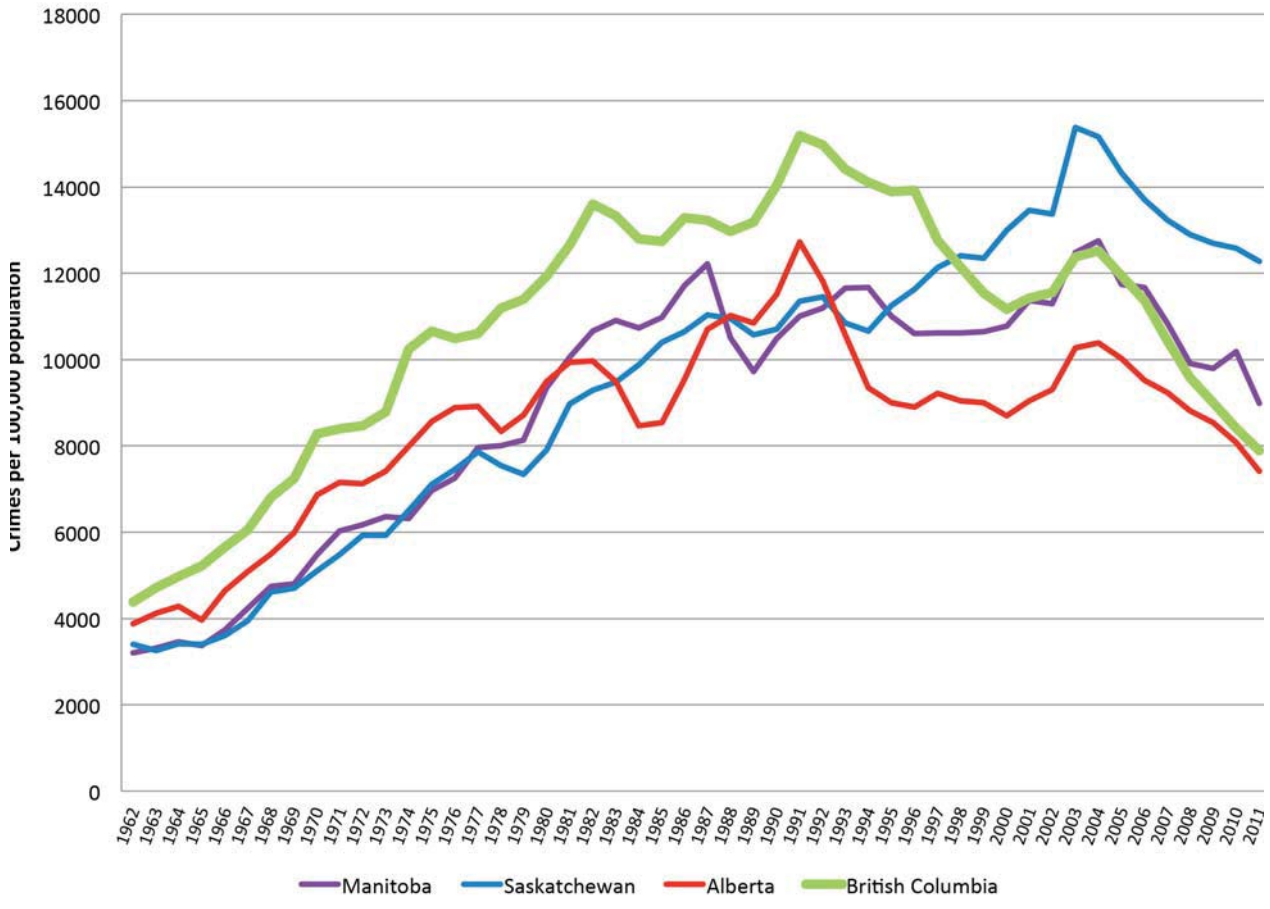
This section provides some general information and data regarding the current operation of the criminal justice system in British Columbia, as well as citing some of the key statistical trends that inform the issues discussed in this report. Unless otherwise specified, the data comes from the Ministry of Justice at the request of the review, usually showing trends from 2001/02 to 2011/12, based on data either from the Ministry databases Justice Information System (JUSTIN), CORIN or Corrections Network (CORNET) or the Canadian Centre for Justice Statistics (CCJS).

3.1 OFFENCES COMMITTED IN BRITISH COLUMBIA

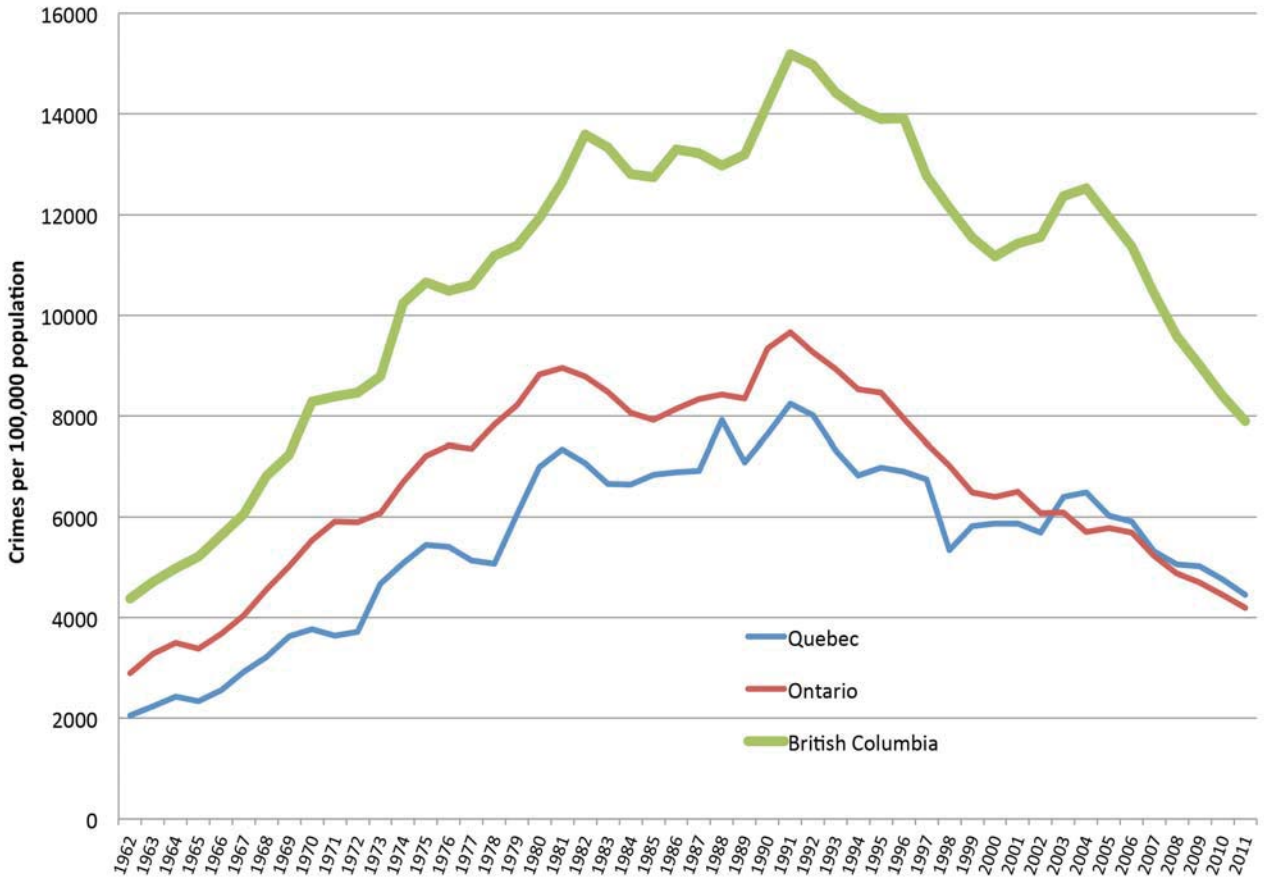
The crime rate in British Columbia has been dropping steadily over the last 10 years, and at a faster rate than in the rest of Canada. Historically, the crime rate in British Columbia has always been significantly above the national average. However, the rate is now closer to the average and is now very close to the rate in Alberta.

The crime rate remains above the average crime rate in central Canada.

CRIME TRENDS WESTERN PROVINCES
TOTAL CRIMINAL CODE OFFENCE RATES (EXCLUDING TRAFFIC) – 1962–2011



CRIME TRENDS QUEBEC, ONTARIO AND BRITISH COLUMBIA
TOTAL CRIMINAL CODE OFFENCE RATES (EXCLUDING TRAFFIC) – 1962–2011

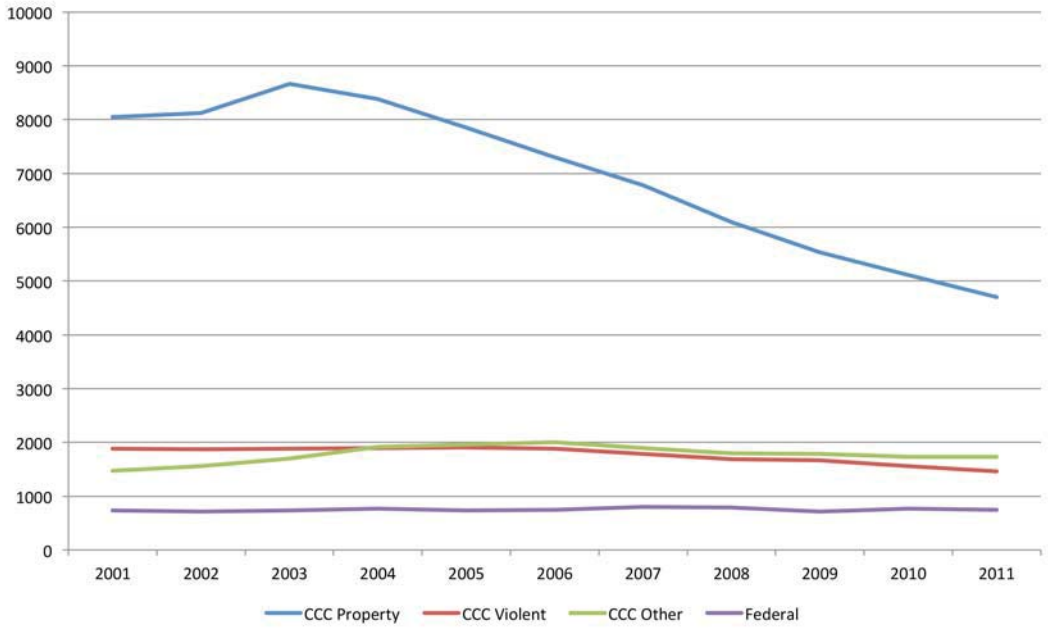


Source: CCJS UCR database. 1962–2008 UCR1. 2009 begins UCR2

As the chart on the next page shows, the drop in reported crime is almost entirely due to a substantial drop in property crime, which constitutes the largest category of offences and has been dropping sharply since 2003. Violent offences have declined slightly; federal offences, primarily drug offences, have remained stable; and "Criminal Code other" have increased slightly. Within the category of violent offences, although homicide increased 4% between 2010 and 2011, it was still the second-lowest rate reported in British Columbia since 1964.[4] Nonetheless, public opinion polls continue to report that the public is anxious about crime and perceives it to be on the rise.[5]

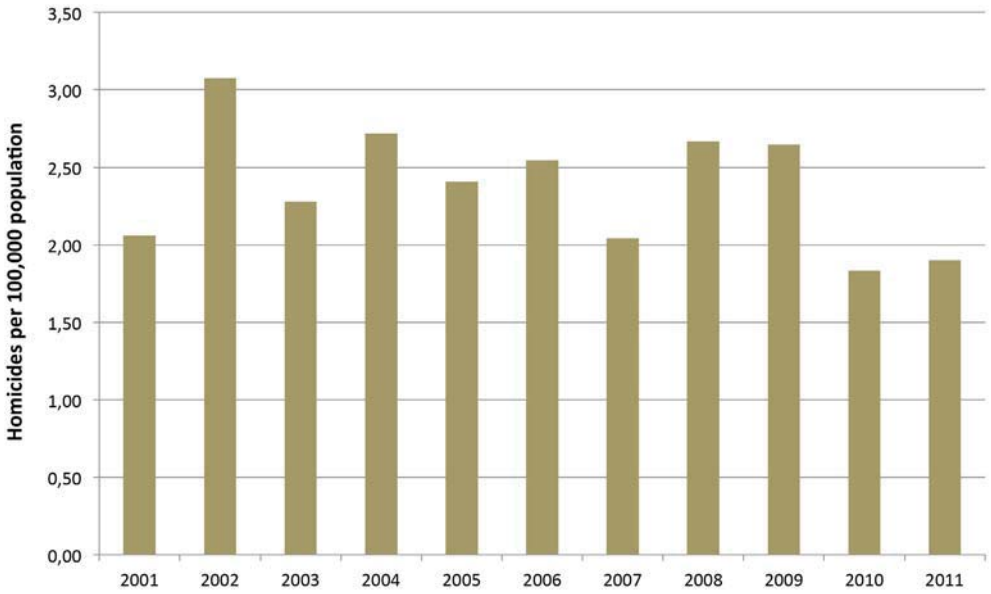
4 Statistics Canada, *Police Reported Crime Statistics in Canada 2011* (24 July 2012), at p. 14, online: Statistics Canada <http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11692-eng.pdf>.
5 Jake Edmiston, "Canada's Inexplicable Anxiety Over Violent Crime", *National Post* (4 August 2012), online: National Post <http://news.nationalpost.com/2012/08/04/canadas-inexplicable-anxiety-over-violent-crime/#1>.

DROP IN BC CRIME LARGELY DUE TO PROPERTY CRIME
CRIME BY MAJOR CATEGORY



Source: CCJS UCR database. 1962–2008 UCR1. 2009 begins UCR2

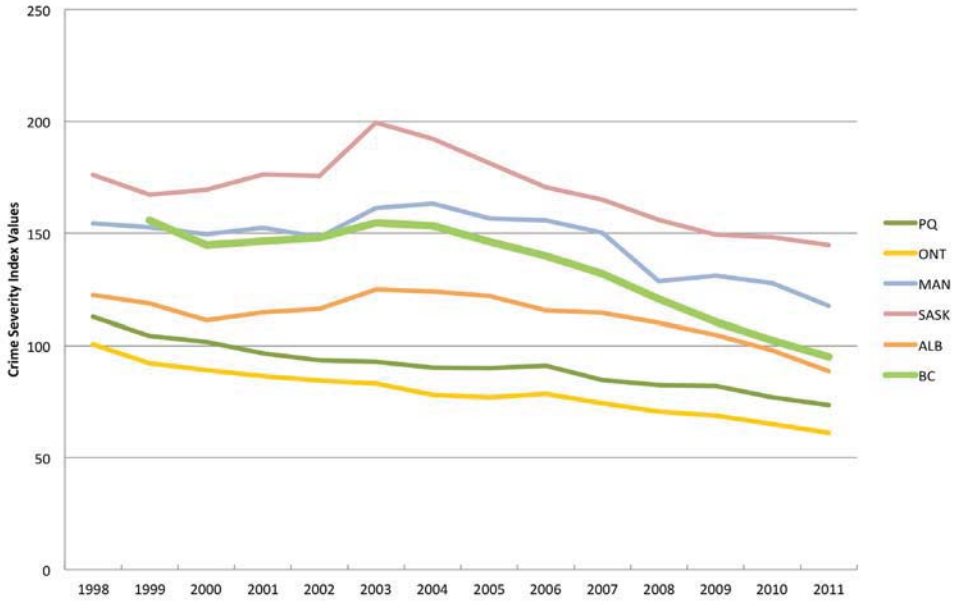
HOMICIDE



Source: CCJS UCR database. 1962–2008 UCR1. 2009 begins UCR2
NB: data includes significant numbers of founded/alleged serial homicide victims

Recognizing that the crime rate is a composite of all offences reported to the police and that the mix of crimes might vary from province to province, CCJS has developed what they call a "crime severity index" to ensure that interprovincial comparisons are more meaningful. The index is "designed to measure change in the overall seriousness of crime from one year to the next, as well as relative differences in the seriousness of crime across the country."[6] Without such an index, the crime rate simply measures the total number of criminal incidents reported to the police. Since violent crime is relatively infrequent, even a significant percentage increase in the violent crime rate will not involve a large number of new offences. This can be readily offset by even a small percentage in property crime that may still involve a large number of crimes. Thus the crime rate may decrease while the crimes that people care most about may increase. The crime severity index was designed to provide a more accurate picture of the overall severity of crime in a province. When the severity index is applied, the crime rate in British Columbia is even closer to the national average than it has been at any time in the last decade.

CRIME SEVERITY INDEX TRENDS – 1998–2011



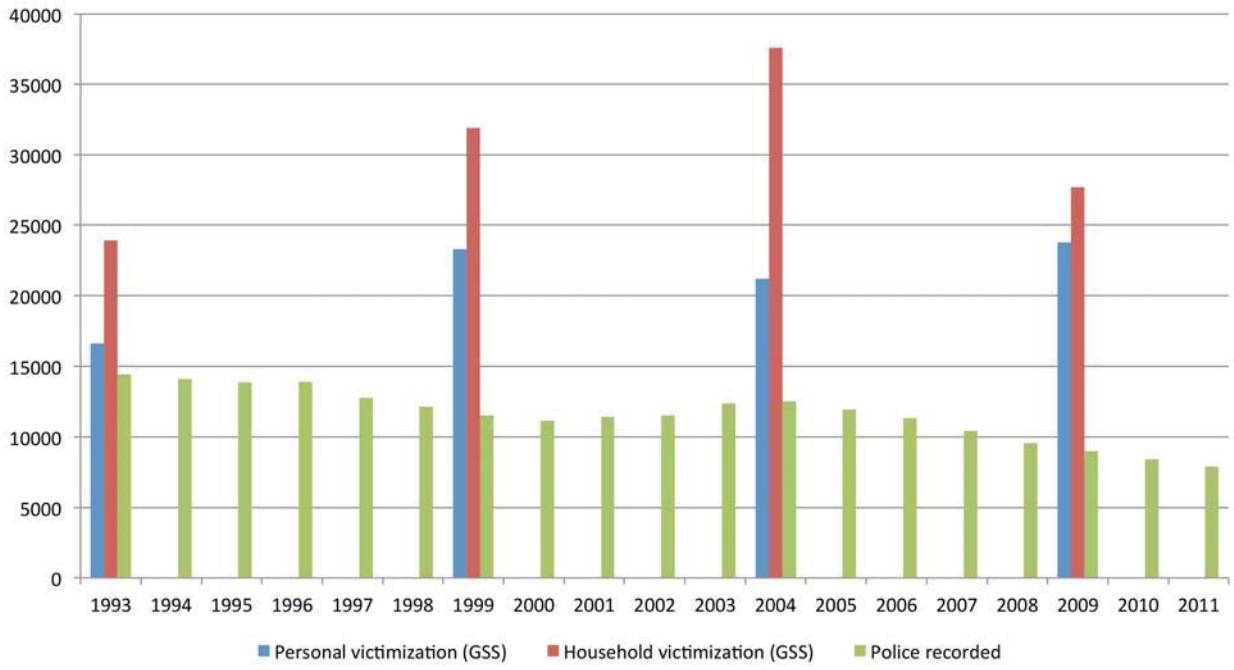
Source: CCJS Crime Severity Index

3.2 VICTIMIZATION RATES VS. REPORTED CRIME

Because we know that not all crime is reported, it could be suggested that the only drop is in reporting, not in the actual crime rate. It is of course difficult to know whether something exists when it is not reported. However, as part of the General Social Survey (GSS) that is conducted by Statistics Canada every five years,[7] there are a number of questions on criminal victimization. It appears that while actual crime is always greater than reported crime, the relative proportion remains fairly constant.

6 Statistics Canada, *Measuring Crime in Canada: Introducing the Crime Severity Index and Improvements to the Uniform Crime Reporting Survey 2009* (April 2009), at p. 6, online: Statistics Canada <www.statcan.gc.ca/pub/85-004-x/85-004-x2009001-eng.pdf>.
7 For an overview of recent Statistics Canada General Social Surveys, see: <http://www5.statcan.gc.ca/bsolc/olc-cel/olc-cel?catno=89F0115X&CHROPG=1&lang=eng>.

ACTUAL CRIME > REPORTED,
BUT AT RELATIVELY CONSTANT RATE
RECORDED CRIME VS. PERSONAL AND HOUSEHOLD VICTIMIZATION (SELF-REPORT): BC



Personal = Assault, sexual assault, robbery, theft of personal property Household = B&E, MV theft, theft of household property, vandalism

Source: CCJS UCR database & GSS victimization data

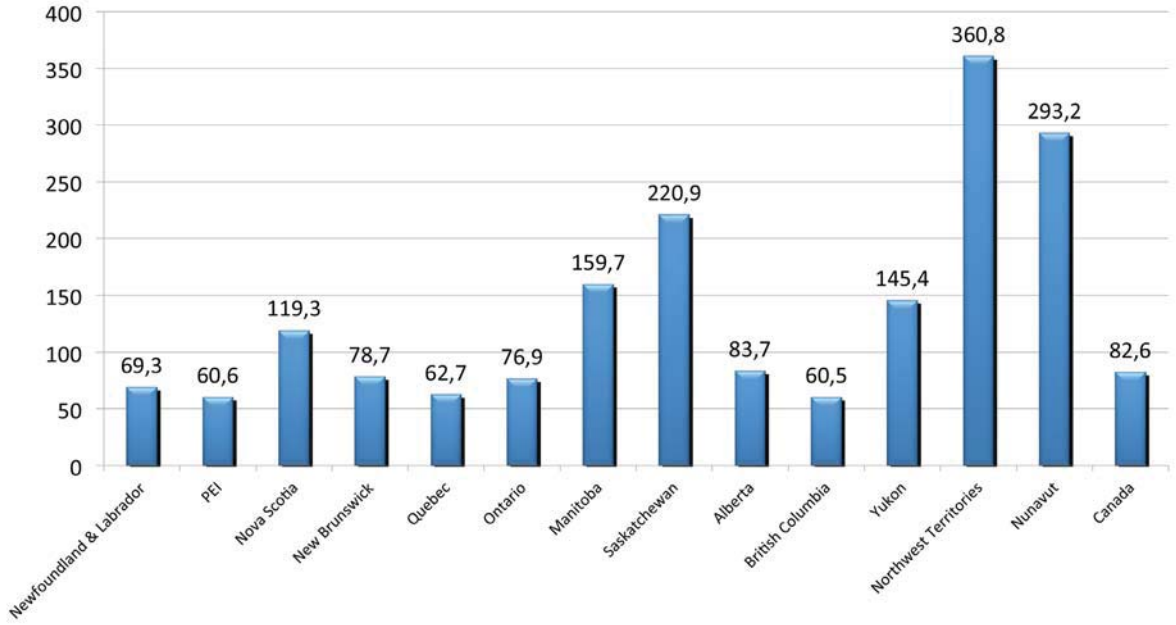
This suggests that the drop in reported property crime does reflect a real and significant drop in actual criminal victimization. However, there does appear to be a growing gap between victimization and reporting of violent crime.[8]

3.3 YOUTH CRIME

While the crime rate generally is going down, youth crime in British Columbia has dropped dramatically over the last decade, including a further 15% reduction from 2010 to 2011. Violent crime dropped by 6%, but when the CCJS severity index was applied, the youth crime severity rate actually dropped by 16%. British Columbia used to have a youth crime rate that was substantially higher than the national average, but now has the third-lowest youth crime rate in the country, after Quebec and Ontario. It has the lowest youth violent crime rate in the country, and using the youth crime severity index, the lowest youth crime rate in the country in 2011.[9, 10]

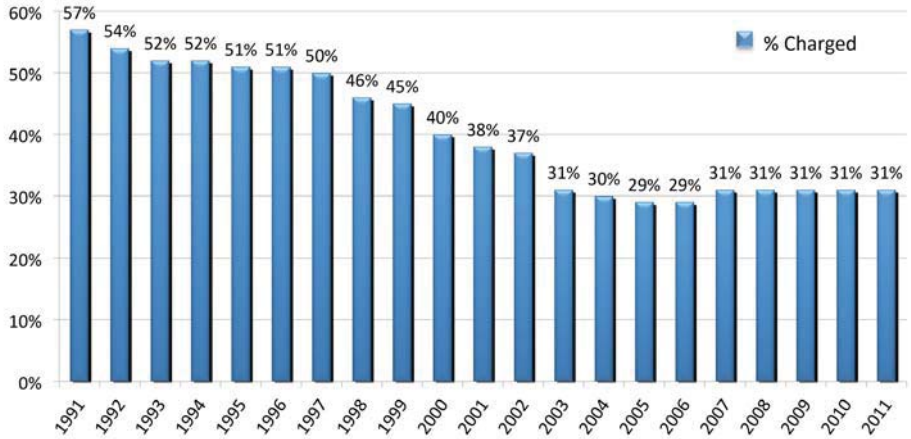
8 Statistics Canada, *Criminal Victimization in Canada, 2009*, (Summer 2010 Vol. 30, No. 2), at p. 14, online: Statistics Canada <http://www.statcan.gc.ca/pub/85-002-x/2010002/article/11340-eng.pdf>.
9 Statistics Canada, *Police Reported Crime Statistics in Canada 2011* (24 July 2012), at p. 22, online: Statistics Canada <http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11692-eng.htm#a5>.
10 Youth Crime tables provided to the BC Justice Reform Initiative by the British Columbia Ministry of Children and Family Development on 24 July 2012.

YOUTH CRIME SEVERITY INDEX, BY PROVINCE, 2011



A significant change over the last decade has been in how police respond to young people they believe have committed an offence. The use of informal diversion, rather than laying charges and using the formal court system, has grown dramatically. As the chart below shows, the percentage of young people who are found by police to have committed an offence and who are then charged has dropped from 57% in 1991 to around 30% since 2003.[11]

PERCENTAGE OF YOUNG PERSONS FOUND BY POLICE TO HAVE COMMITTED AN OFFENCE WHO WERE CHARGED BY THE POLICE – BC

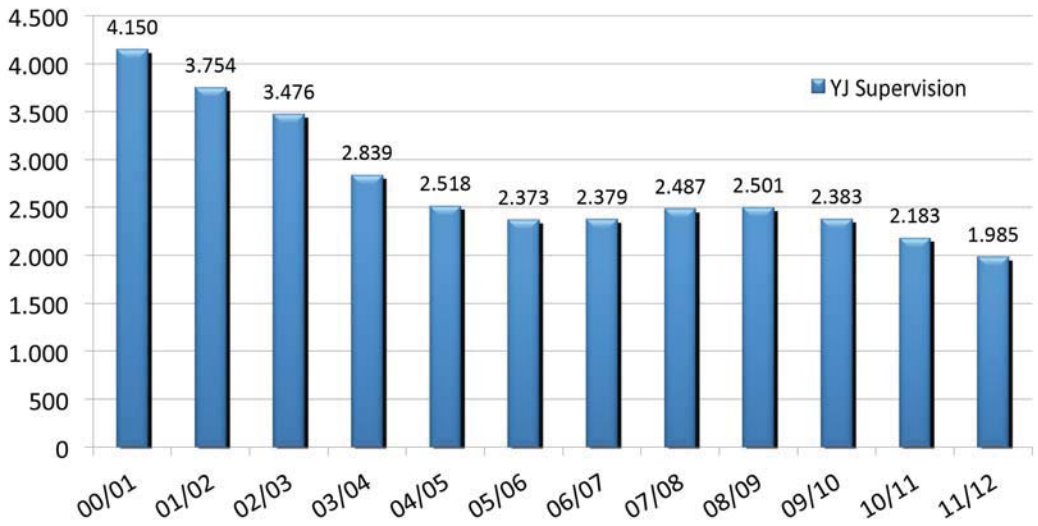


11 Note that chart does not show that 60% of all young persons in 1991 were charged with an offence, but rather that 60% of young persons who were found by police to have committed an offence were charged by police.

As you would expect, the numbers of youth sentenced to community or imprisonment has also dropped. Since 2001, the number of youth under community supervision has dropped by 50%, from over 4,000 on average to about 2,000 in 2011/12.

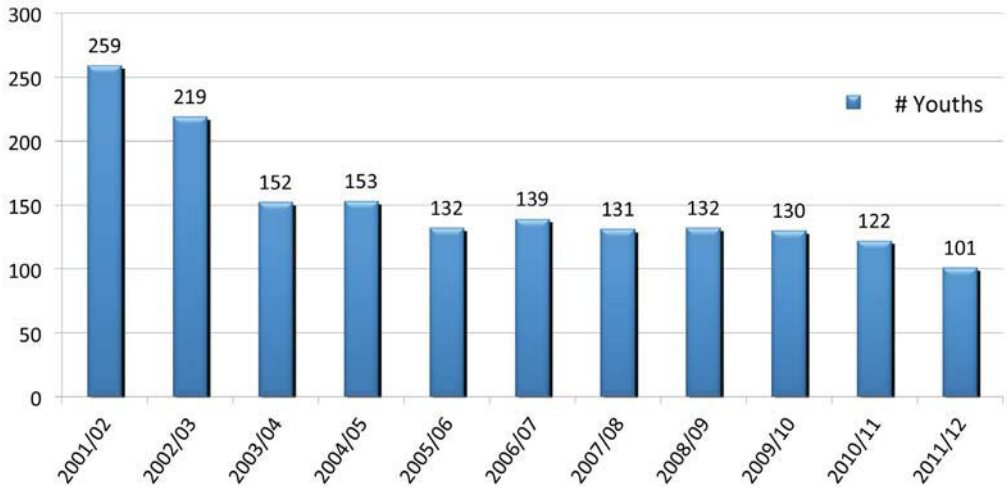
Similarly, youth incarceration has dropped even more dramatically, from almost 300 youth in custody on average in 2001 to about 100 now, both in remand and sentenced.

AVERAGE NUMBER OF YOUTH UNDER COMMUNITY YOUTH JUSTICE SUPERVISION – BC



Includes all forms of community youth justice supervision, e.g. probation, bail, ISSP, conditional supervision, etc.

AVERAGE NUMBER OF YOUTH IN CUSTODY – BC



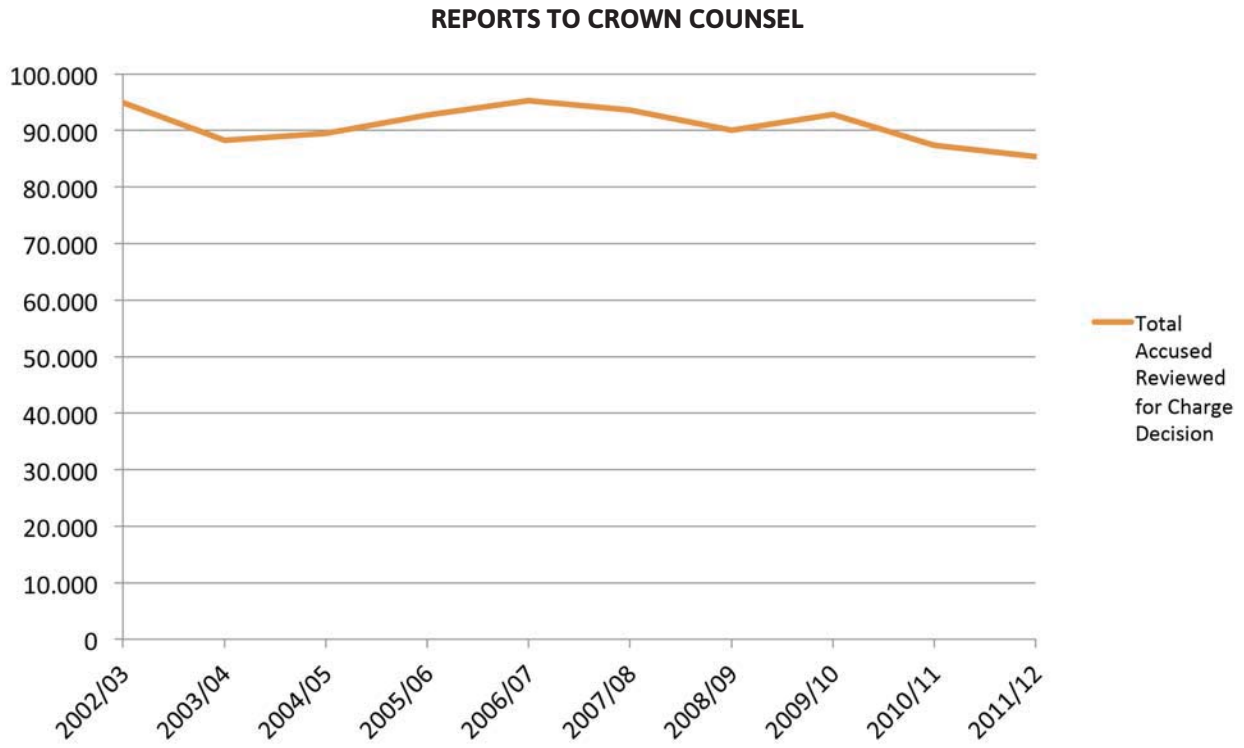
3.4 POLICING

In British Columbia, policing services are provided by the Royal Canadian Mounted Police (RCMP) (federal, provincial and municipal forces), independent municipal police departments, and a First Nations–administered force.[12] On April 1, 2012, the provision of provincial and municipal police services by the RCMP to the Province of British Columbia was continued for a further 20 years, with the coming into effect of three new memoranda of agreement.[13]

Among other things, the police are responsible for gathering evidence and investigating whether a crime has been committed. In circumstances where the police recommend charges be laid, they will prepare an RCC. In British Columbia it is Crown counsel (also referred to as prosecutors) who make the ultimate decision on charges.[14]

Although the crime rate has been dropping steadily in BC, the number of RCCs sent to Crown counsel has been stable, at least until 2010/11. However in 2011/12 there was a drop of 8,000 in the number of impaired-driving RCCs referred to Crown counsel as a result of the IRP program.[15]

One reason for this trend is that over the last decade police in British Columbia, as in the rest of Canada, have been solving more of the crimes reported to them.[16] Another reason is that police are recommending an increasing number of charges for breach of court orders.

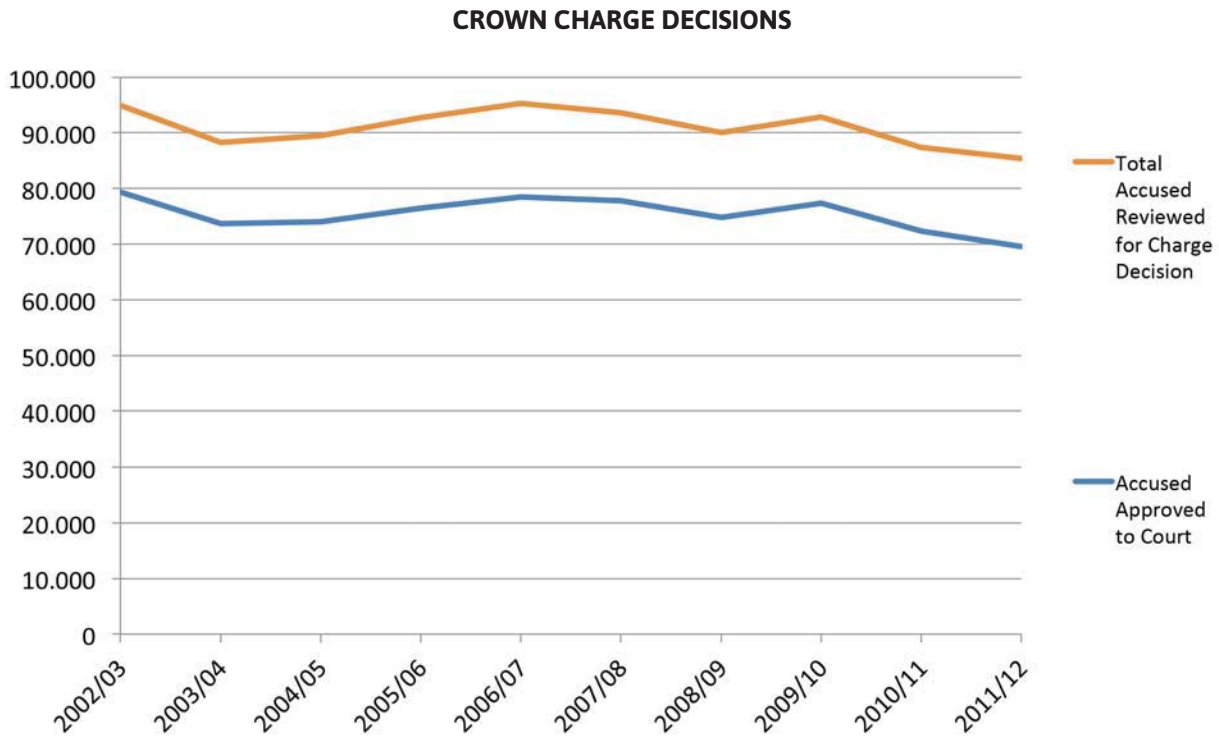


12 British Columbia Ministry of Justice, *Policing in British Columbia*, online: Ministry of Justice <http://www.pssg.gov.bc.ca/policeservices/>. For further information on Policing in BC, see <http://www.pssg.gov.bc.ca/policeservices/description/index.htm>.
13 Copies of those agreements and further information can be found at <http://www.pssg.gov.bc.ca/policeservices/police-agreements/index.htm#rcmpagreements>.
14 For further information on this process, see: <http://www.justicebc.ca/en/cjis/understanding/how_it_works/crime/index.html> and <http://www.justicebc.ca/en/cjis/you/accused/investigating/police_crown_counsel.html>.
15 See chart in Section 3.5 below. For further discussion of the IRP, see Section 1.1 of the Annex to this Report.
16 Statistics Canada, *Table 1: Police-reported weighted clearance rate, by province and territory, 2000 to 2010*, (7 June 2012), online: Statistics Canada <http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11647/tbl/tbl01-eng.htm>.

3.5 LAYING CHARGES

As outlined above, Crown counsel working in the Prosecution service within the Criminal Justice Branch of the Ministry of Justice have sole responsibility for laying criminal charges in British Columbia. Prosecutors will consider RCCs from police and conduct a charge assessment. This is generally the responsibility of an individual prosecutor exercising his or her prosecutorial independence. It is also the role of prosecutors to prosecute offences and appeals in British Columbia related to the Criminal Code of Canada and provincial regulatory offences.[17]

The percentage of charges approved by Crown counsel has remained relatively consistent over the last 10 years, at approximately 85% of all RCCs filed by police, as shown in the chart below.



3.6 CASES BROUGHT BEFORE THE PROVINCIAL COURT

Between 2003/04 and 2009/10, despite the drop in the crime rate, the Provincial Court criminal caseload was fairly constant at just over 100,000 cases a year. As noted above, this appears to be in part due to the increase in police clearance rates, but also due to the steady increase in the numbers of charges laid by police for what are termed "administration of justice" offences—breaches of conditions placed on release of a person by either a court or by the police themselves.

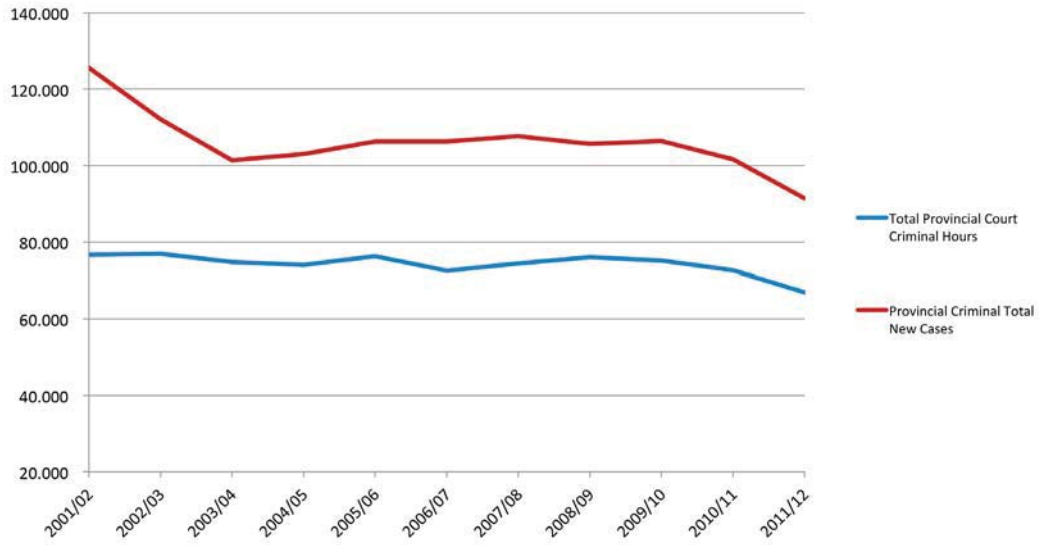
The caseload started to decline significantly in 2010 and dropped even more sharply, by 8,000 cases, in 2011/12, primarily as a result of the introduction of the Integrated Roadside Prohibition (IRP) program in September 2010.[18]

17 British Columbia Ministry of Justice, *Role of Crown Counsel*, online: British Columbia Ministry of Justice <http://www.ag.gov.bc.ca/prosecution-service/BC-prosecution/crown-counsel.htm>.
18 For further discussion of the IRP, see Section 1.1 of the Annex to this Report.

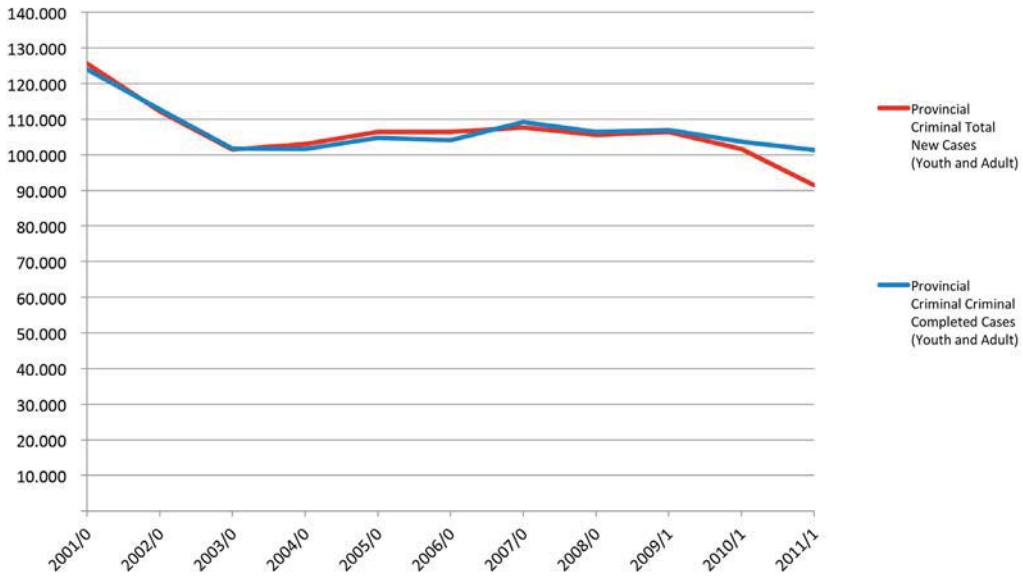
Since 2006/07, the Provincial Court has been concluding slightly more cases than the number of new cases coming into the system, so the backlog has not been growing.

However, with the substantial drop of 8,000 cases in 2011/12, even with 1,000 fewer cases completed than in the previous year, the backlog, or pending cases, was reduced substantially, from almost 33,000 to just over 25,000 for adults, a reduction of 23%, and from 1,900 to about 1,500 for youth, a reduction of 22%.

PROVINCIAL CRIMINAL COURT HOURS AND CASE VOLUMES



PROVINCIAL COURT NEW CASES AND CONCLUDED CASES

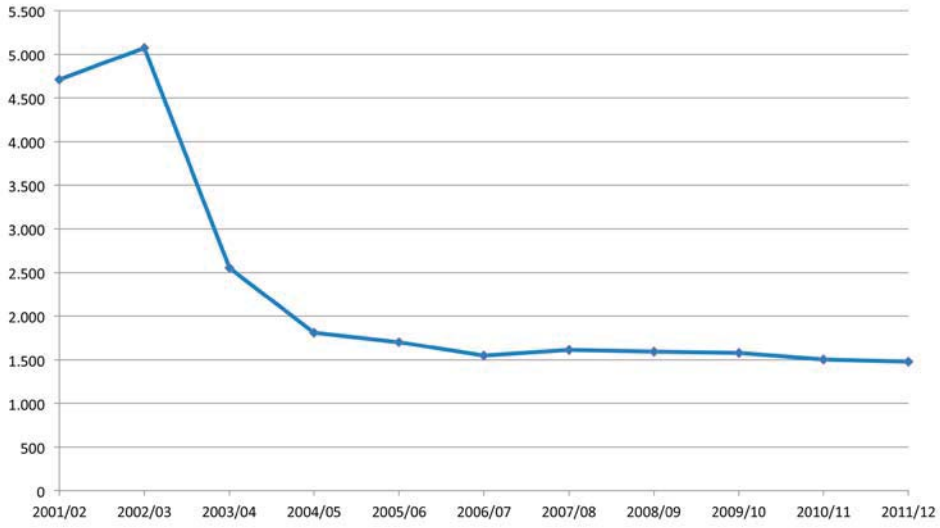


3.7 CASES BROUGHT BEFORE THE SUPREME COURT OF BRITISH COLUMBIA

Over 98% of all criminal cases are dealt with in Provincial Court.[19] The Supreme Court, which deals with the most serious criminal offences such as murder, has seen its criminal caseload drop by 300 cases, from 1,691 cases in 2005 to 1,368 cases in 2011. This includes criminal matters such as bail reviews, wiretap authorizations, and Extradition Act matters, as well as criminal trials and sentencing.[20]

In 2011, there were 415 criminal trials in the Supreme Court,[21] compared with 433 the prior year.[22] The significant drop in cases in 2003/04 was as a result of a change in provincial legislation, so that applications for more time to dispute traffic tickets no longer went to the Supreme Court.

SUPREME COURT NEW CRIMINAL CASES



3.8 CRIMINAL CASES IN THE COURT OF APPEAL

The Court of Appeal is the last court for almost all criminal cases in the province and may hear cases that were first decided in the Provincial Court or the Supreme Court.

In 2011 the Court of Appeal received filings for approximately 110 appeals from sentence and 163 appeals from conviction, acquittal, summary conviction or other matters such as bail.

The types of underlying offences include all types, but the most frequently heard include drug offences (approx. 40%), assault, murder, sexual, property, motor vehicle and fraud offences.[23]

In 2011, 17% of criminal appeals involved self-represented litigants.

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19 For information on filings, see the Annual Reports of the British Columbia Supreme Court at <http://www.courts.gov.bc.ca/supreme_court/about_the_supreme_court/annual_reports/index.aspx> and the Annual Reports of the Provincial Court of British Columbia at <http://www.provincialcourt.bc.ca/news-reports/court-reports>.
20 Supreme Court of British Columbia, *Annual Report 2011* (Vancouver: Supreme Court of British Columbia, 2011), at p. 48, online: Courts of British Columbia <http://www.courts.gov.bc.ca/supreme_court/about_the_supreme_court/annual_reports/2011%20Annual%20Report.pdf>
21 Supreme Court of British Columbia, *Annual Report 2011* (Vancouver: Supreme Court of British Columbia, 2011), at p. 55, online: Courts of British Columbia <http://www.courts.gov.bc.ca/supreme_court/about_the_supreme_court/annual_reports/2011%20Annual%20Report.pdf>.
22 Supreme Court of British Columbia, *Annual Report 2010* (Vancouver: Supreme Court of British Columbia, 2010), at p. 53, online: Courts of British Columbia <http://www.courts.gov.bc.ca/supreme_court/about_the_supreme_court/annual_reports/2010%20Annual%20Report.pdf>.
23 British Columbia Court of Appeal, *Annual Report 2011* (Vancouver: British Columbia Court of Appeal, 2011), at p. 41, online: Courts of British Columbia <http://www.courts.gov.bc.ca/Court_of_Appeal/about_the_court_of_appeal/annual_report/2011%20ANNUAL%20REPORT.pdf>

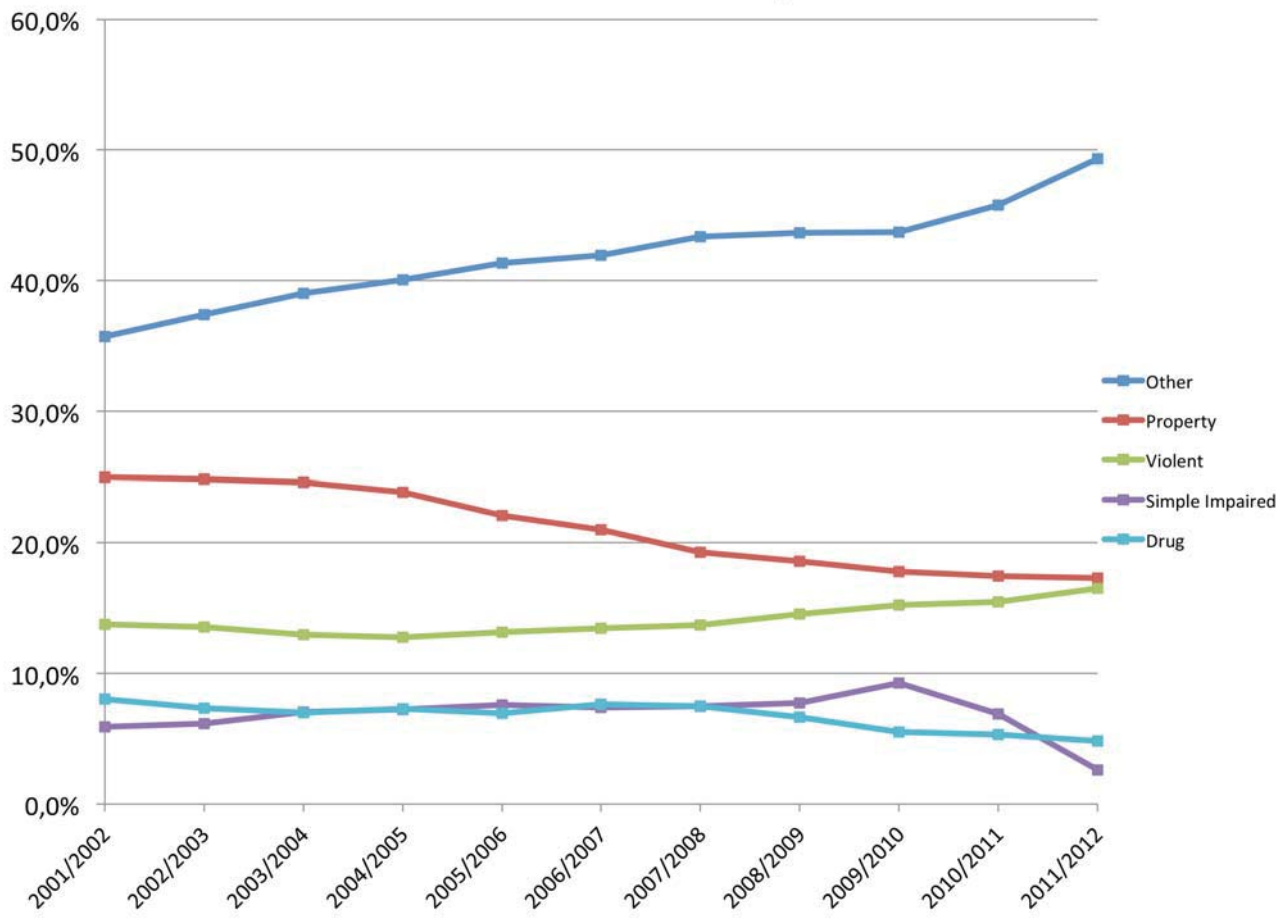
The Court of Appeal has been conducting a pilot to expedite the hearing of all conviction and acquittal appeals, which has included collaboration with the bar and efforts to facilitate the necessary logistical steps to making appeals ready for hearing by the Court.

The stated goal of the pilot is to have the majority of all conviction and acquittal appeals heard within a year. The results will likely be incorporated in new Criminal Appeal Rules. The pilot is underway, is being monitored and will be evaluated, and the results will be available sometime in 2013.[24]

3.9 TYPES OF CASES IN THE PROVINCIAL COURT

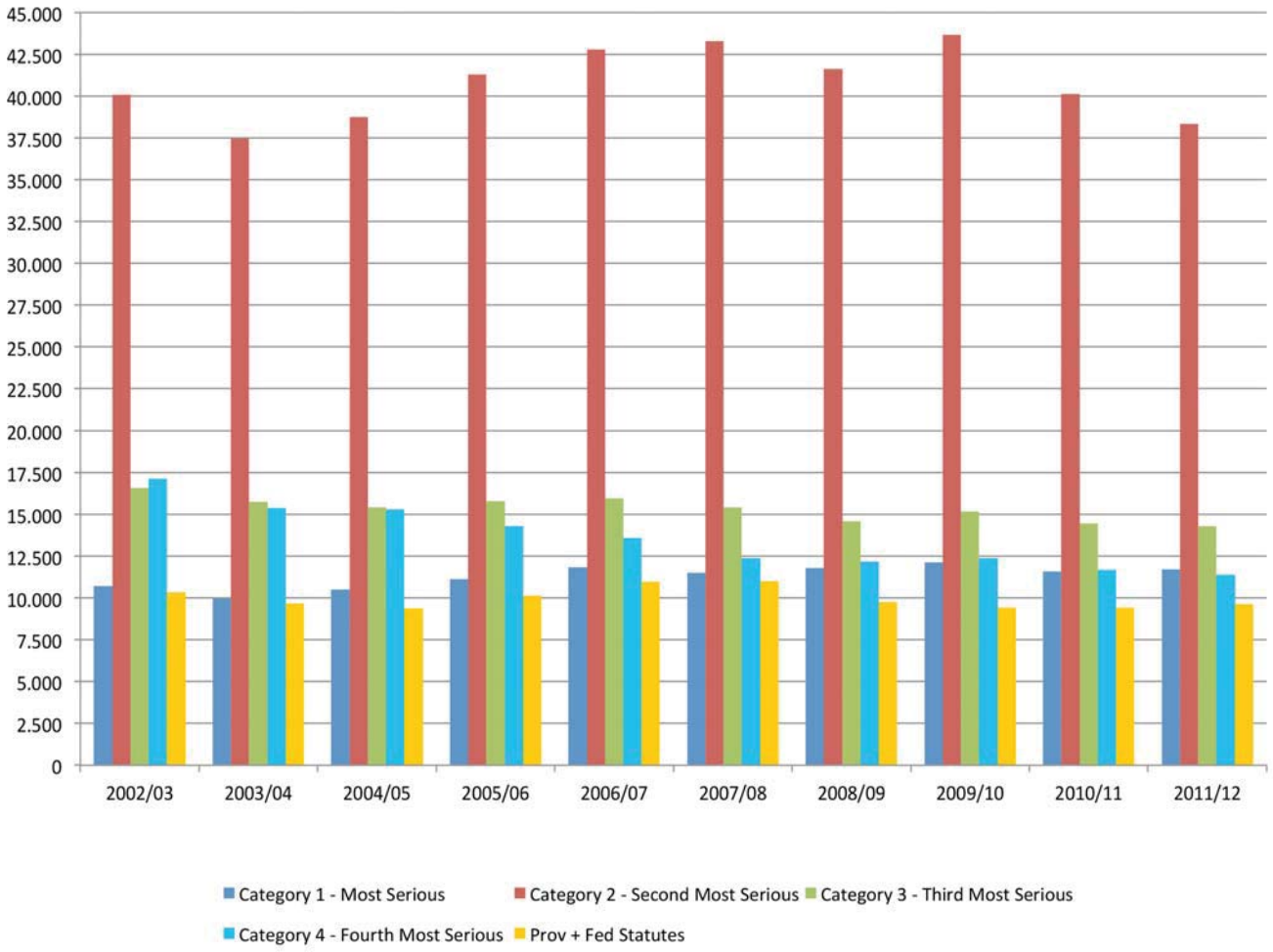
Although the caseload was relatively constant in Provincial Court for a number of years, the last two years have seen a marked decrease. As well, the makeup of the charges has changed significantly. Property offences have dropped dramatically, so the "other" category, which largely comprises what are termed administration of justice offences, primarily breaches of probation and breaches of bail, now comprise an even larger percentage of the caseload, up to 45%.

% OF COURT CASE VOLUME BY OFFENCE



24 British Columbia Court of Appeal, *Annual Report 2011* (Vancouver: British Columbia Court of Appeal, 2011), at p. 23, online: Courts of British Columbia <http://www.courts.gov.bc.ca/Court_of_Appeal/about_the_court_of_appeal/annual_report/2011%20ANNUAL%20REPORT.pdf>

VOLUME OF OFFENCES BY CATEGORY



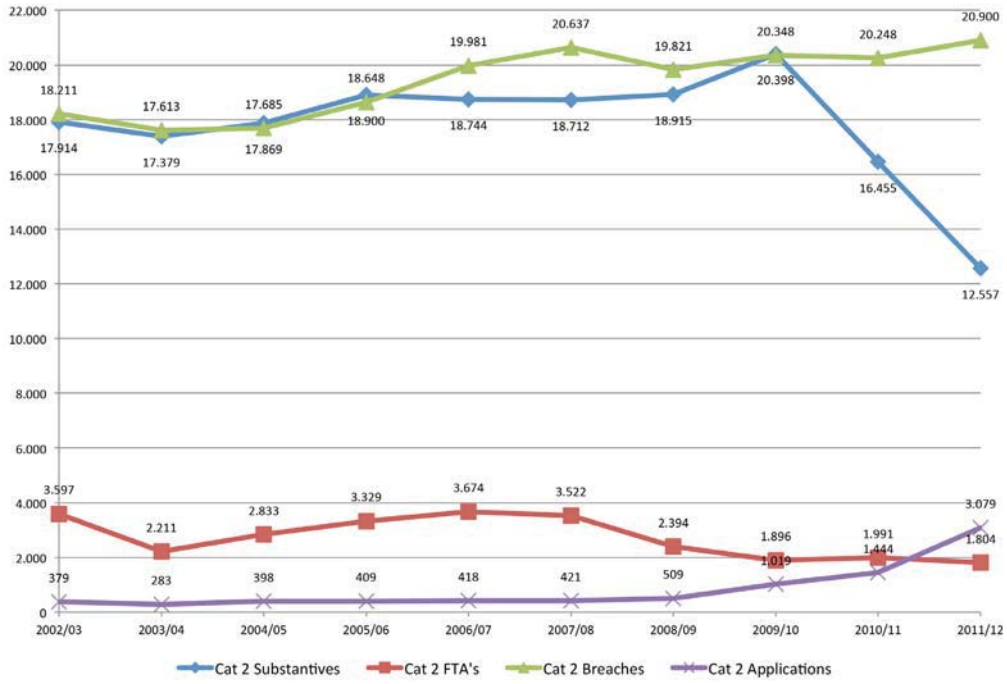
In the above chart, category 2 offences are considered to be the second most serious. They include impaired driving, serious assault, break and enter of a dwelling, and weapons offences, among others. However, this category also includes breach of probation or other court order, which make up an increasing percentage of this category.

Within the category of administration of justice offences, there has been an increase in breaches of various types of orders that are recommended for charge by police officers rather than by probation officers.

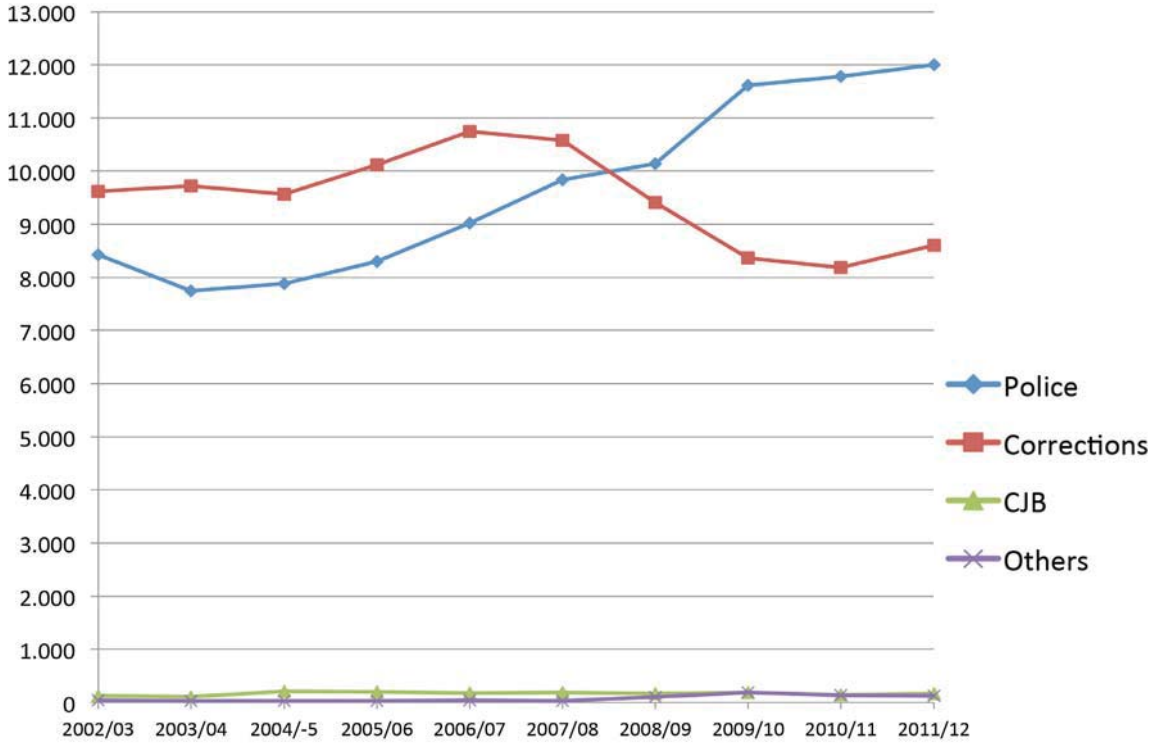
The reasons for this have not been documented. Explanations may include

- New police policies to pursue administration of justice charges aggressively as a way to manage offender behaviour, improve public safety and encourage respect for orders of the court;
- Delay in time to trial, which creates a longer period of time within which an accused can fail to comply with conditions; and
- Unrealistic conditions, not involving further criminal behaviour, which accused are unwilling or unable to comply with.

CATEGORY 2 – FEWER IMPAIRED, INCREASED BREACHES

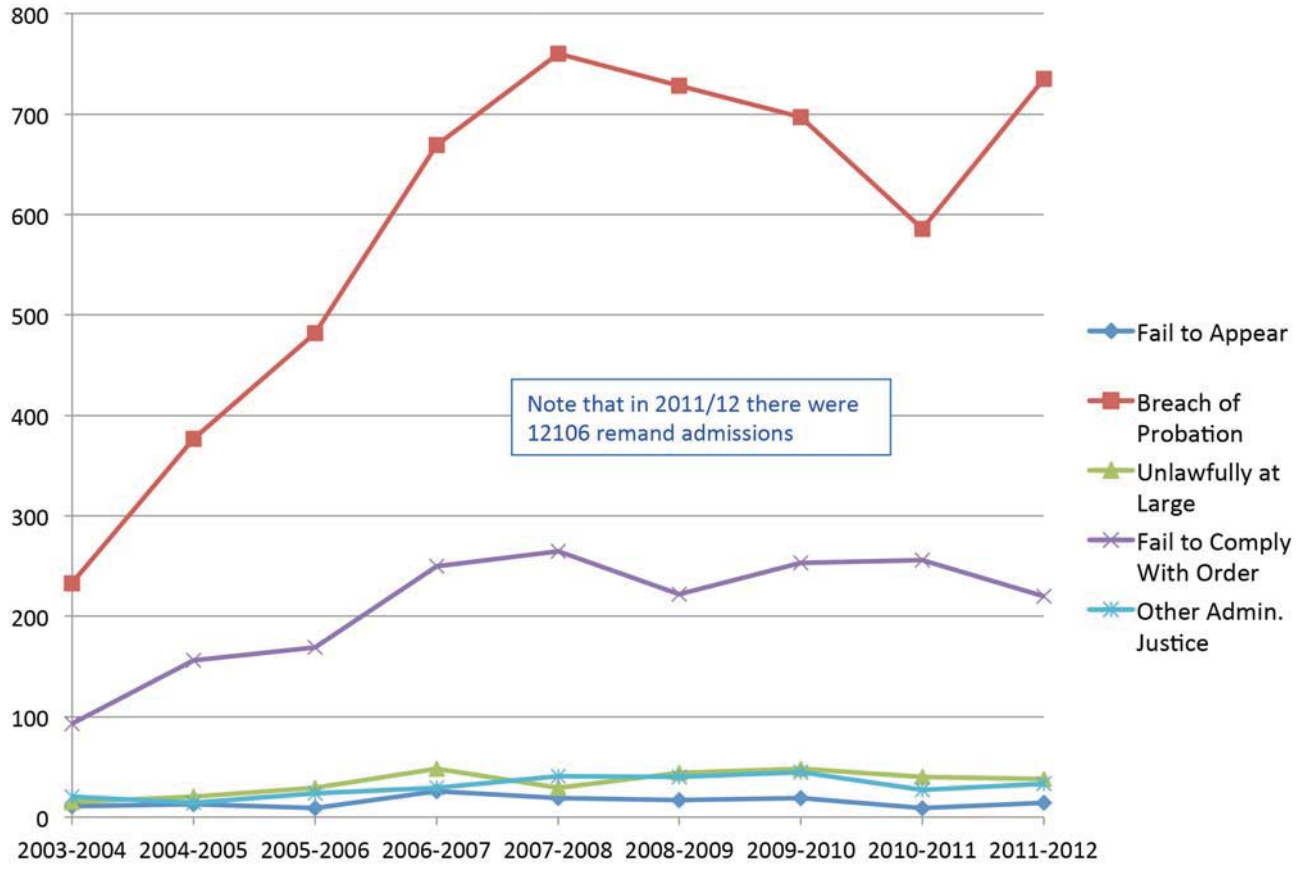


CATEGORY 2 BREACHES BY INVESTIGATOR



However, as the charts below indicate, there is a difference in the outcomes for breaches of probation as compared with other kinds of breaches. Offenders charged with breach of probation are somewhat more likely to be remanded in custody and ultimately sentenced to custody than are offenders charged with other kinds of breaches, such as bail.

REMAND ADMISSIONS FOR ADMINISTRATION OF JUSTICE CHARGES

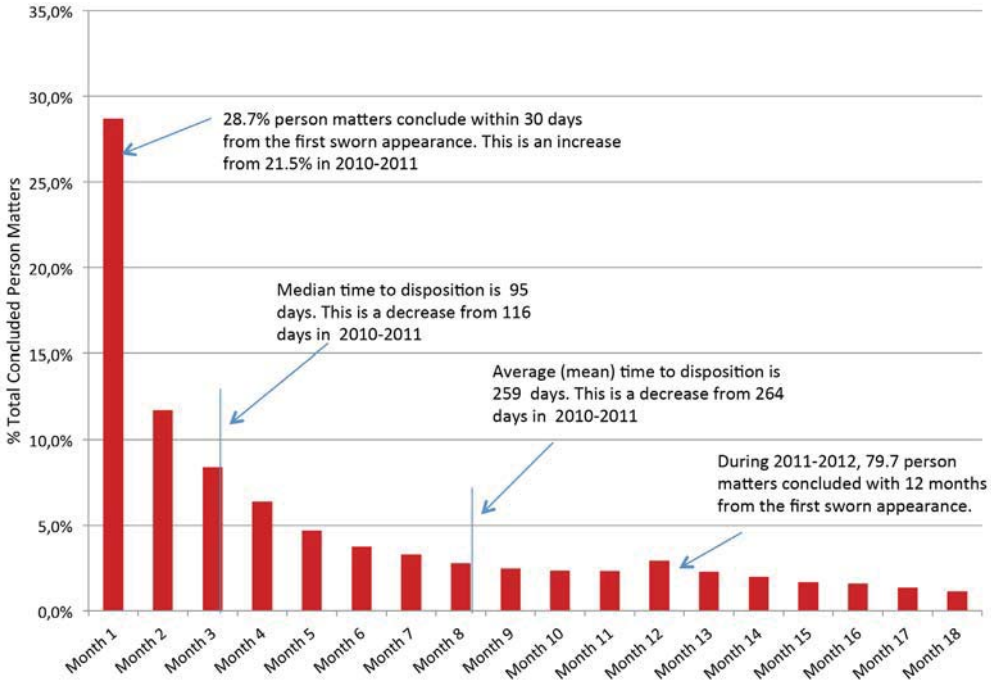


3.10 TIMELINESS

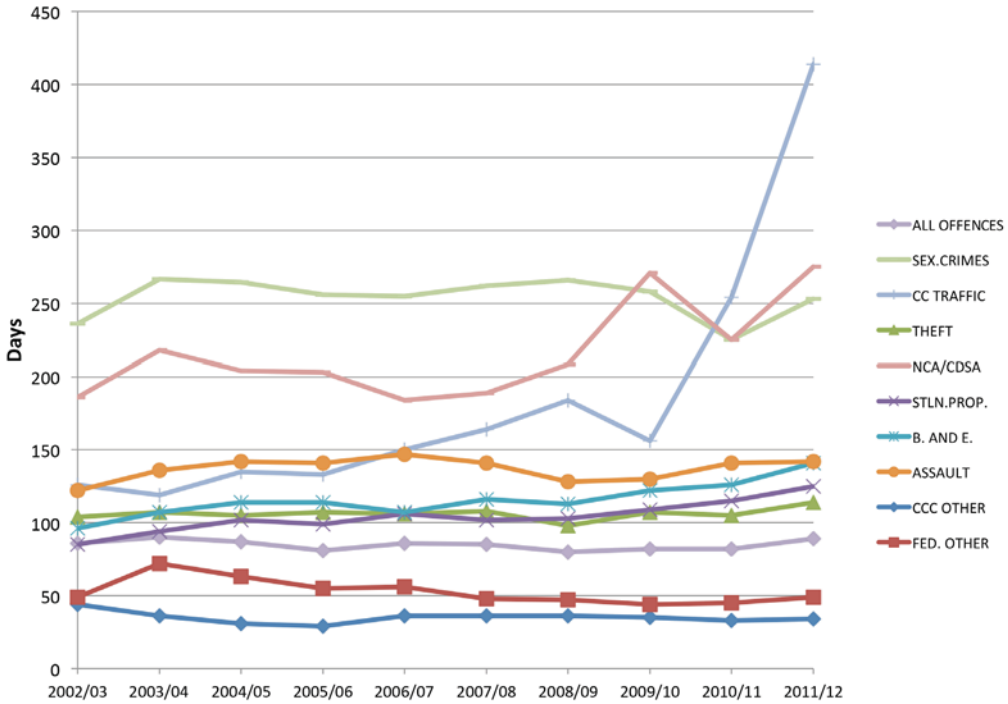
In Provincial Court, while there are real concerns about delay, it is important to remember that significant delay does not affect all cases. In 2011/12, almost 30% of cases resolved within 30 days of their first appearance in court, 50% resolved in just over 3 months, and 80% of cases resolved within 12 months from the first sworn appearance.[25] However, six to eight weeks will pass between many criminal events and the first day of appearance in court.

25 Information and chart provided to the BC Justice Reform Initiative by the British Columbia Ministry of Justice, 27 July 2012.

MEDIAN TIME TO DISPOSITION 2011/2012



CONCLUDED CASE MEDIAN TIME TO DISPOSITION BY OFFENCE TYPE



Similarly, the majority of cases do not in fact consume a significant amount of court time, with 73% of concluded cases using half a day or less of court time and 26% of cases using between half a day and two days of total court time.

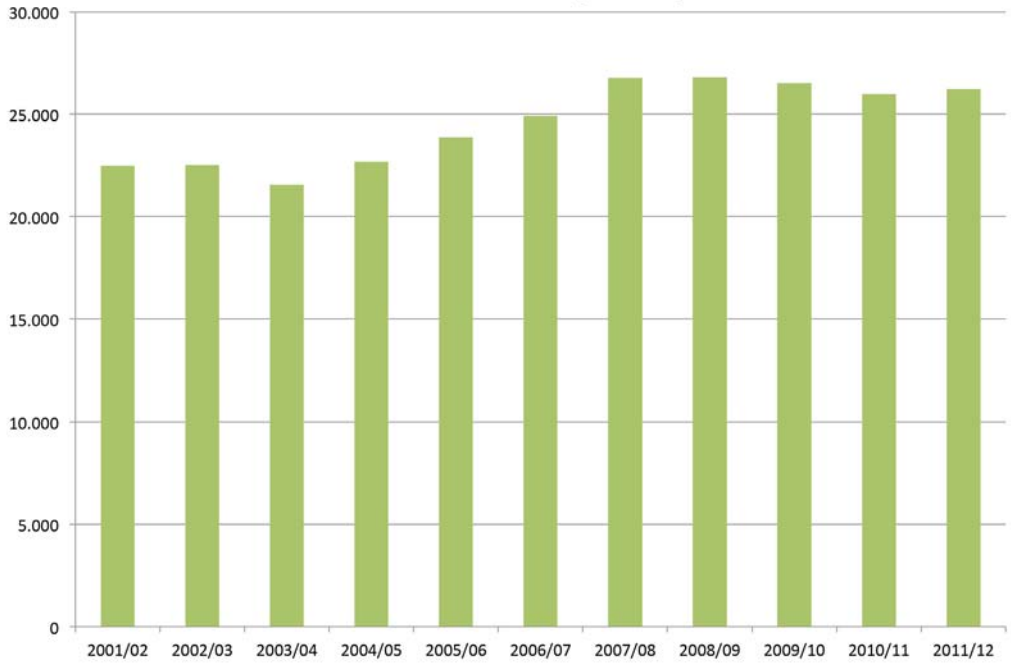
The remaining 1%, though, can consume many days of court time. Some cases can become so delayed that they are stayed by the Crown or court because the delay has unduly interfered with the accused's right to a trial within a reasonable period of time—commonly known as becoming subject to *Askov*[26].

As well, when we look at the makeup of appearances in court, we see that the majority of appearances are either administrative or for bail. There are slightly more sentencing appearances now than 10 years ago, but first appearances are down, reflecting the smaller number of cases in the system. Trial appearances have been slowly reducing. This is an area where the government's data system is weak; while it counts individual trial appearances, it is not possible to determine from the data how long individual trials are, or how length may differ for different kinds of offences. It could be that trials are not in fact getting longer, or that, while trials are getting longer there are significantly fewer of them, or, most likely, some combination of the two.

There are no specific performance measures for the hearing or determination of criminal matters in the Supreme Court. The nature of the work in Supreme Court means that there is a wide range of times taken up by pre-trial procedures, trials and reserved judgments.

Apart from the time to bring appeals to hearing, in 2011 the Court of Appeal delivered 94% of its judgments within the six-month period suggested by the Canadian Judicial Council.[27]

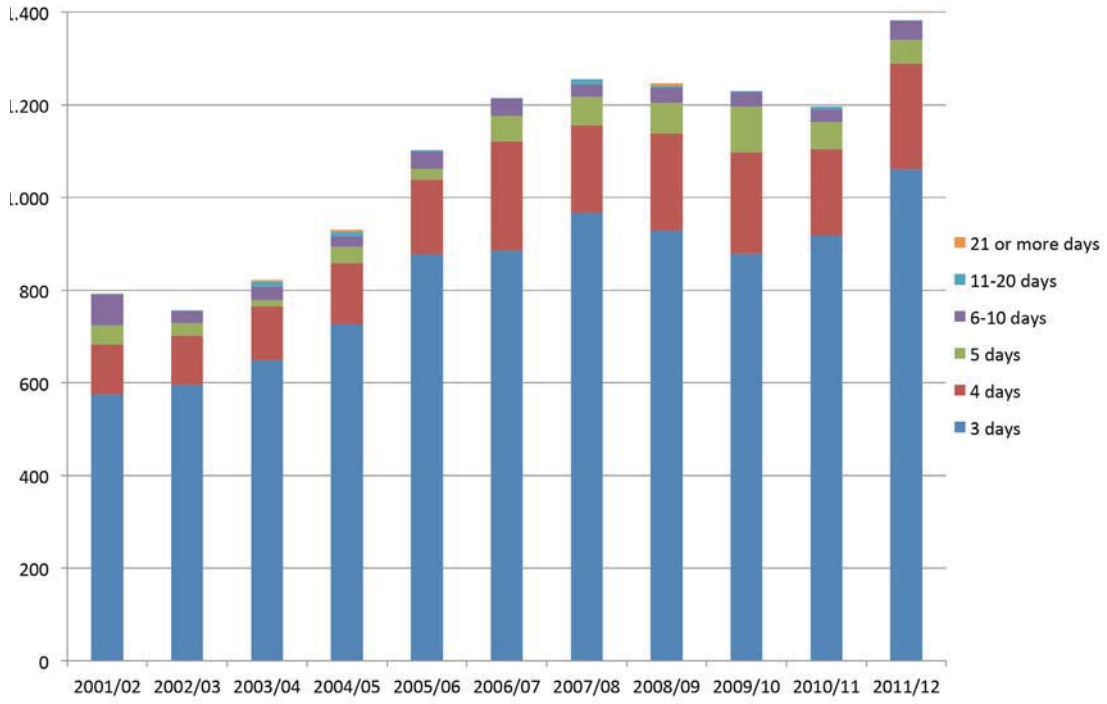
26% OF COURT CASES USE BETWEEN 1/2 DAY TO 2 DAYS TOTAL COURT TIME



*note: court time is estimated

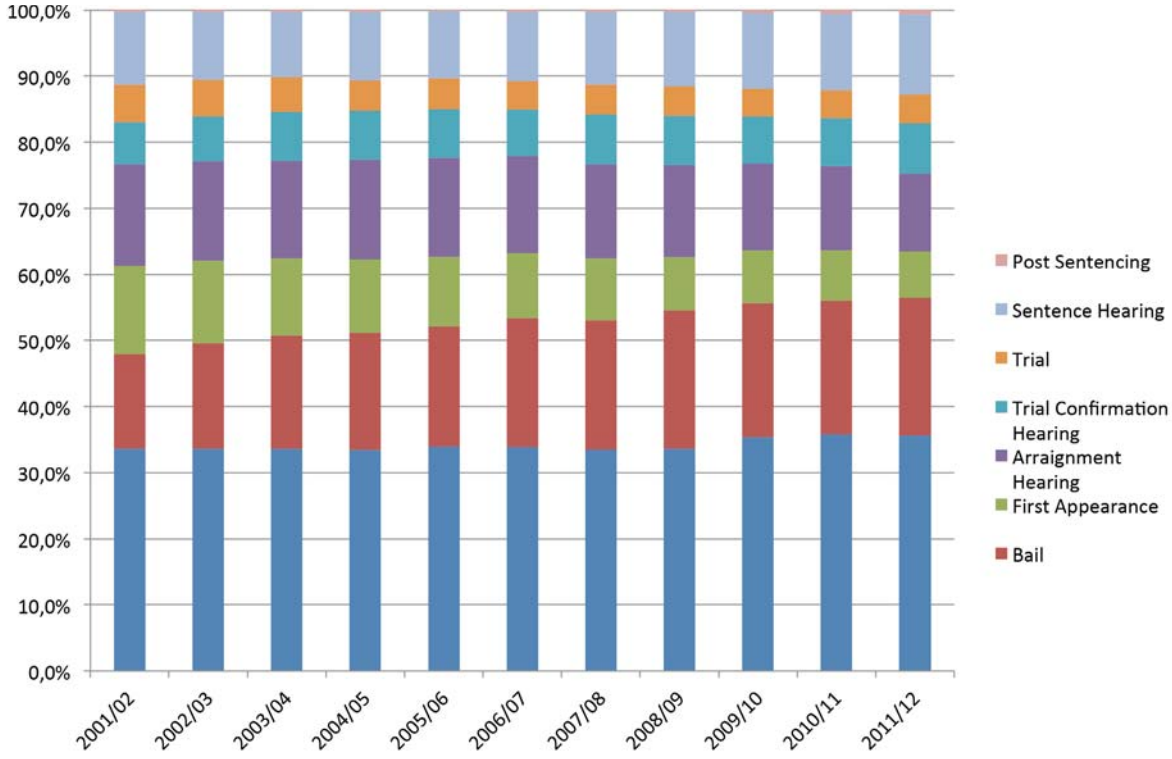
26 *R. v. Askov*, [1990] 2 SCR 1199, online: Supreme Court of Canada <http://scc.lexum.org/en/1990/1990scr2-1199/1990scr2-1199.html>.
27 British Columbia Court of Appeal, *Annual Report 2011* (Vancouver: British Columbia Court of Appeal, 2011), at p. 14, online: Courts of British Columbia <http://www.courts.gov.bc.ca/Court_of_Appeal/about_the_court_of_appeal/annual_report/2011%20ANNUAL%20REPORT.pdf>.

1% OF COURT CASES USE 3 DAYS OR MORE OF COURT TIME



*note: court time is estimated

MOST APPEARANCES ARE ADMINISTRATIVE AND BAIL



3.11 CASES WHICH PROCEED TO TRIAL AND TRIAL APPEARANCES

One of the interesting things about the criminal justice system is that there is such a focus on trials. And yet the vast majority of cases are resolved without even a single trial appearance being scheduled, let alone a trial actually being held. As the chart below shows, a trial appearance is scheduled in approximately 16% of cases. The level was relatively constant at about 18% until 2009/10, but then dropped in 2010/11.[28]

There are a number of reasons why cases do not proceed to trial. As noted earlier, over 80% of cases resolve without a trial date being scheduled. The matter may be resolved early as a result of a guilty plea by the accused.[29]

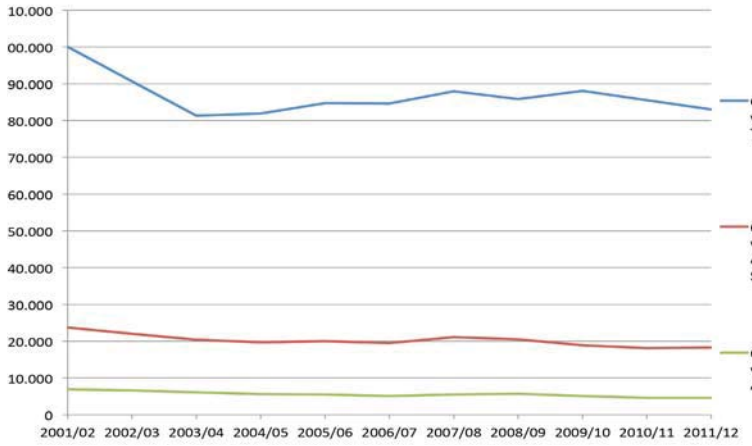
Alternatively, criminal charges against an accused may be stayed for a number of reasons:

- Crown counsel may form the view that there are particular charges that no longer meet the charge assessment standard;
- In circumstances where there are a number of charges against an individual, Crown counsel may direct a stay of proceedings on a particular charge and accept a plea to a reduced number of charges or to included offences;[30]
- It may be that Crown counsel is unable to proceed with a hearing of the criminal trial, due, for example, to the unavailability of witnesses; and
- In relatively few cases, and as mentioned above, the court may decide that the delay in a particular case is so long that it has undermined the accused's right to a trial within a reasonable period of time, and accordingly stays the charges.

An actual trial appearance is only held in approximately 4.5% of cases.[31] Unfortunately, the provincial data system cannot tell us what happens on that first trial appearance; that is, it cannot give us the percentage of cases where there is a guilty plea, whether the charge is stayed or adjourned, or whether the trial actually proceeds.

In the 2005 Report on Backlog in Vancouver Adult Criminal Court,[32] it was noted that the Vancouver

MOST CASES: NO TRIAL APPEARANCES



Fiscal Year	Completed Cases	Concluded Cases with No Scheduled Trial Appearance	Concluded Cases with Trial Appearance Scheduled	Concluded Cases with Trial Appearance Held
2001/02	123,752	80.81%	19.19%	5.60%
2002/03	112,700	80.47%	19.53%	5.84%
2003/04	101,738	79.90%	20.10%	5.97%
2004/05	101,633	80.61%	19.39%	5.55%
2005/06	104,723	80.93%	19.07%	5.28%
2006/07	104,098	81.31%	18.69%	4.91%
2007/08	109,076	80.68%	19.32%	5.08%
2008/09	106,351	80.74%	19.26%	5.33%
2009/10	106,985	82.30%	17.70%	4.77%
2010/11	103,642	82.51%	17.49%	4.47%
2011/12	101,331	81.98%	18.02%	4.52%

28 Table provided to the BC Justice Reform Initiative by the British Columbia Ministry of Justice.
29 See British Columbia Ministry of Attorney General, Criminal Justice Branch, *Crown Counsel Policy Manual: Resolution Discussions and Stays of Proceedings* (2 October 2009), p. 2, online: <http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/RES1-ResolutionDiscns_SOPs-2Oct2009.pdf>.
30 See British Columbia Ministry of Attorney General, Criminal Justice Branch, *Crown Counsel Policy Manual: Resolution Discussions and Stays of Proceedings* (2 October 2009), p. 2, online: <http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/RES1-ResolutionDiscns_SOPs-2Oct2009.pdf>.
31 There is some uncertainty respecting this figure, but the range appears to be approximately 4.5–7.0%. Whatever the precise figure it is a very small portion of the total.
32 Provincial Court of British Columbia, *Main Street Criminal Procedure Committee Backlog Reduction Initiative: Report on Backlog in Vancouver Adult Criminal Court* (January 2005), online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/MainStreetCriminalProcedureCommitteeReportonBacklog.pdf>.

Court experienced a trial collapse rate of 70%, both before and after the implementation of the Criminal Case Flow Management (CCFM) rules.

The Office of the Chief Judge (OCJ) conducts regular surveys to determine how many of the cases scheduled for trial actually go to trial. We were provided with information about the six-month period from January to June 2011 and from January to June 2012. The study found that, of the cases that have even a single trial appearance, only 30% proceeded to trial. Of the remainder, 40% pleaded guilty, 13% were stays of proceedings by the prosecution, bench warrants were issued in 4% of cases, the prosecution requested an adjournment in 3% of cases, defence requested an adjournment in 6% of cases and there was no court time to proceed in 3% of cases. This is a trial collapse rate of 70%, which seems to hold fairly constant over the years, regardless of initiatives to reduce it.

There is a strong view that trials are substantially longer than they used to be and that this is a significant contributor to court workload. It is clearly the case that some trials indeed take longer, but overall the number of appearances in Provincial Court for trials has declined somewhat over the last decade.

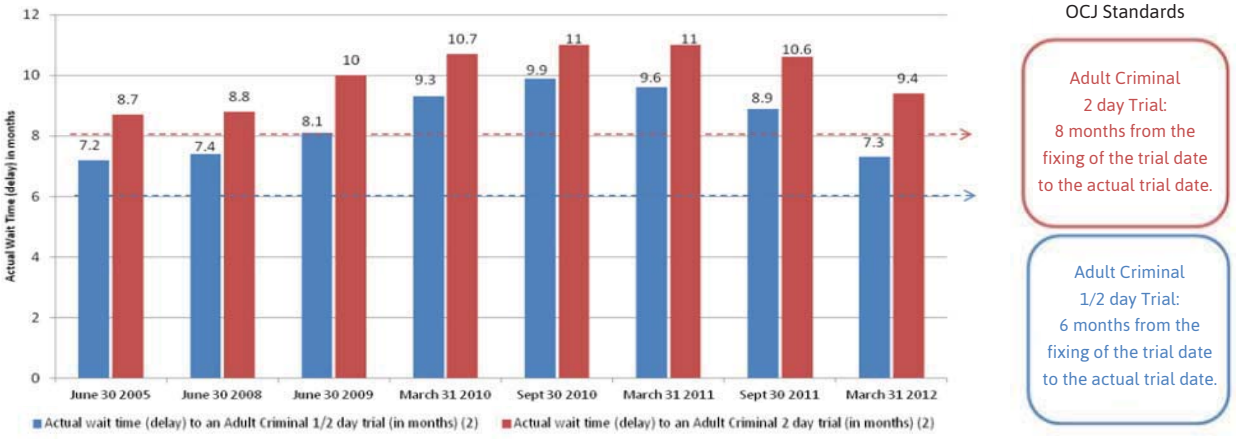
3.12 HOW LONG DOES IT TAKE TO GET TO TRIAL?

The "time to trial" specifically refers to the period of time that passes from when the accused indicates he or she will plead not guilty, to the next available trial date—which varies depending on the anticipated length of trial and court location. These are assessments by the court, as the actual time to trial is not recorded in a way that can be broken down. The time to trial for a two-day trial in 10 different court locations varies from 12 to 16 months, despite the standard set by the OCJ of the Provincial Court of eight months.[33]

Generally speaking, delay is longer in our biggest court locations, and this is a phenomenon that we see in other jurisdictions as well. For example, in Ontario's Justice On Target (JOT) project, there were significantly more problems in their largest court locations, and these court locations typically made less progress towards the stated efficiency goals than the smallest locations.[34]

Data from the most recent *Justice Delayed: Update* issued by the Provincial Court of British Columbia[35] is shown in the following figure.

PROVINCE-WIDE DELAYS FOR ADULT CRIMINAL TRIALS – COMPARING 2005 AND 2008–2012



33 There is some uncertainty concerning the precise standard. The measure is achieved in many of the Court's registries.
34 For further information on Justice on Target, see Section 2.3 of the Annex to this report, or see: Ontario Ministry of the Attorney General <http://www.attorneygeneral.jus.gov.on.ca/english/jot/>.
35 Provincial Court of British Columbia, Court Report, *Justice Delayed: Update* (as 31 March, 2012), at p. 4, online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/Justice%20Delayed%20-%20Update%20March%202012.pdf>.

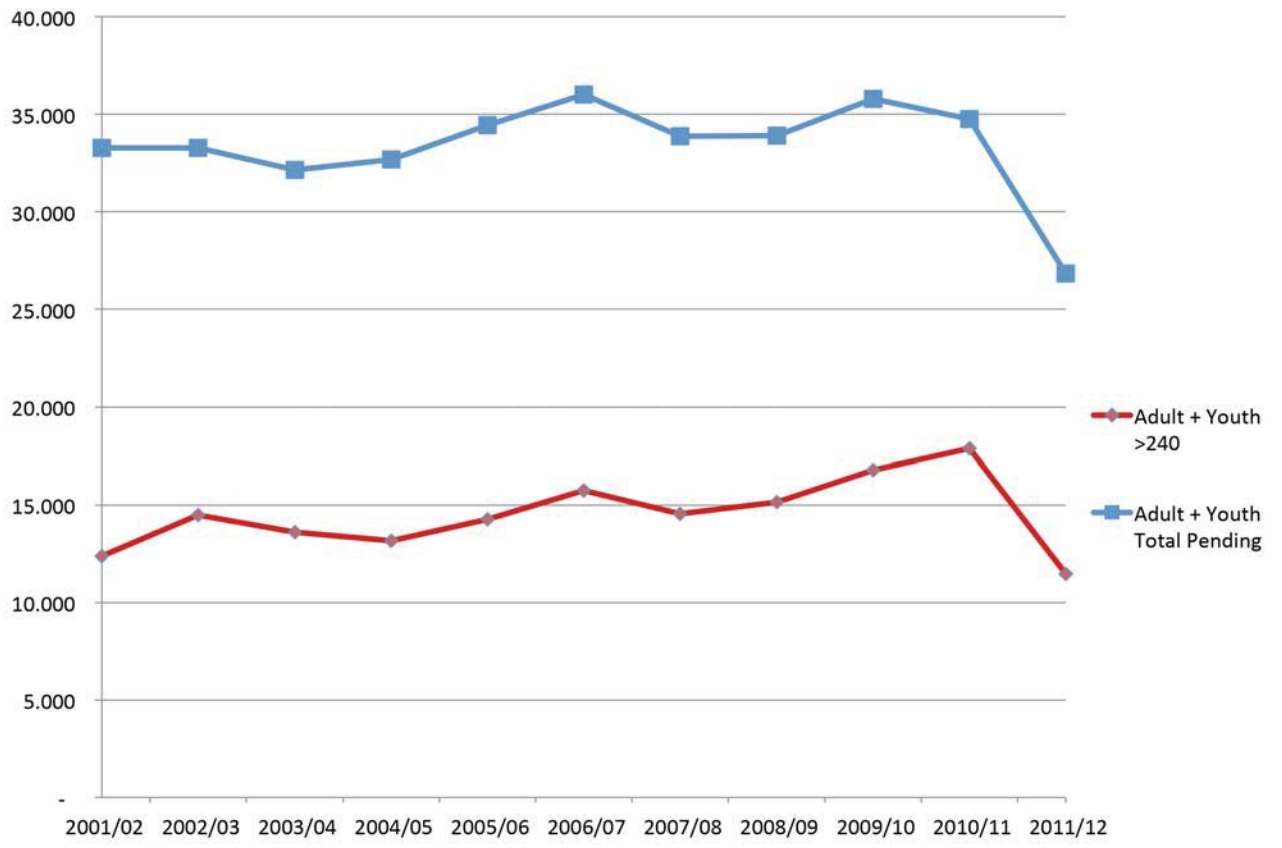
3.13 WHAT IS THE BACKLOG?

Backlog generally refers to those cases which have been in the system for longer than the benchmark, or more than 240 days.

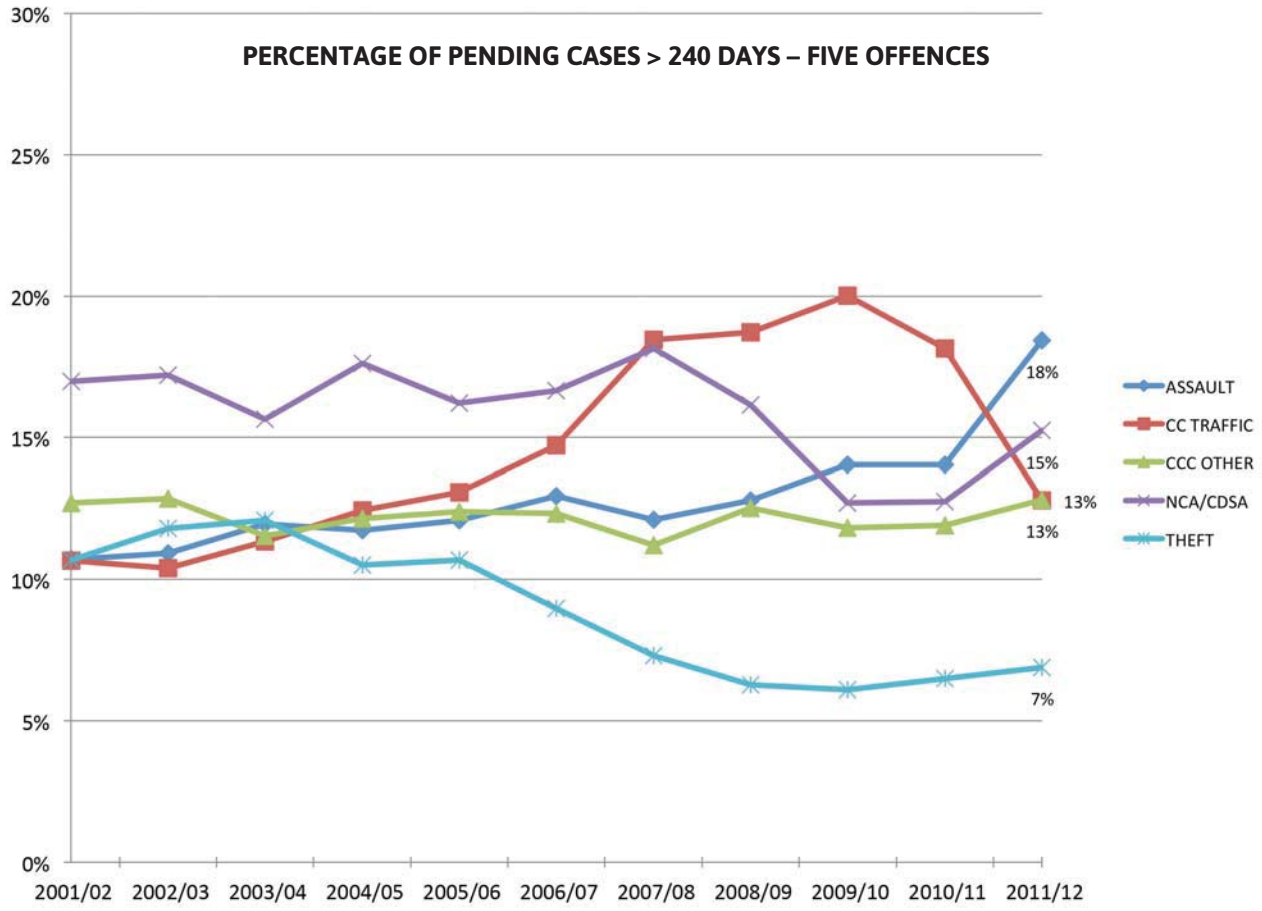
For the last five years the Provincial Court has been concluding slightly more cases than the number of new cases coming into the system each year, so the number of cases in the system, often referred to as pending cases, has slowly been coming down. However, as a result of the introduction of the IRP program in 2010, there was a significant reduction in new cases coming into the Provincial Court in 2011/12, and consequently a significant reduction in pending cases. As the chart below shows, in 2011/12, pending cases dropped dramatically, from about 33,000 to just over 26,000, a level that has not been seen in the Provincial Court since the early 1990s. For the last decade, pending cases have varied between 32,000 and almost 36,000.

However, even though the number of pending cases has been declining, the age of those cases has risen, so that for the last few years, almost 50% of pending cases have been in the system for more than 240 days, or eight months. Within that 50%, there has been a decrease in cases in the system for eight months to one year, and an increase in cases pending for between one and two years.[36] Four percent of pending cases have now been in the system for more than two years.

TOTAL PENDING CASES VS. PENDING CASES > 240 DAYS



36 British Columbia Court Services Branch Criminal Management Information System (CORIN) on 1 November 2011.



Within the group of cases pending for more than 240 days, there are some significant differences among offence types, and this has changed dramatically over the last year, with the sharp reduction in the numbers of impaired driving cases entering the system. While the backlog of cases of drug offences and assaults has increased, the percentage of Criminal Code traffic, primarily impaired driving, has dropped sharply.

3.14 COURT ADMINISTRATION SERVICES

Court Administration services in British Columbia are delivered by the Court Services Branch of the Ministry. These services include:

- Court registry services;
- Court clerk services; and
- Sheriff's services.

The Court Services Branch is headed by an assistant deputy minister (ADM), who co-reports to the Chief Justices and Chief Judge, and to the deputy attorney general.[37]

3.15 BC CORRECTIONS

BC Corrections is responsible for adult offender management and control on behalf of the province. Federally incarcerated individuals (those persons serving sentences longer than two years) are the

37 For further information on court administration in British Columbia, see: British Columbia Ministry of Justice <http://www.ag.gov.bc.ca/courts/>.

responsibility of the Correctional Service of Canada. The Adult Custody Division operates nine correctional centres across British Columbia, which house individuals awaiting trial, in immigration detention, or serving a custody sentence of less than two years. The Community Corrections and Corporate Programs Division operates 55 community corrections offices, which supervise individuals on bail, recognizance, probation or conditional sentences.[38]

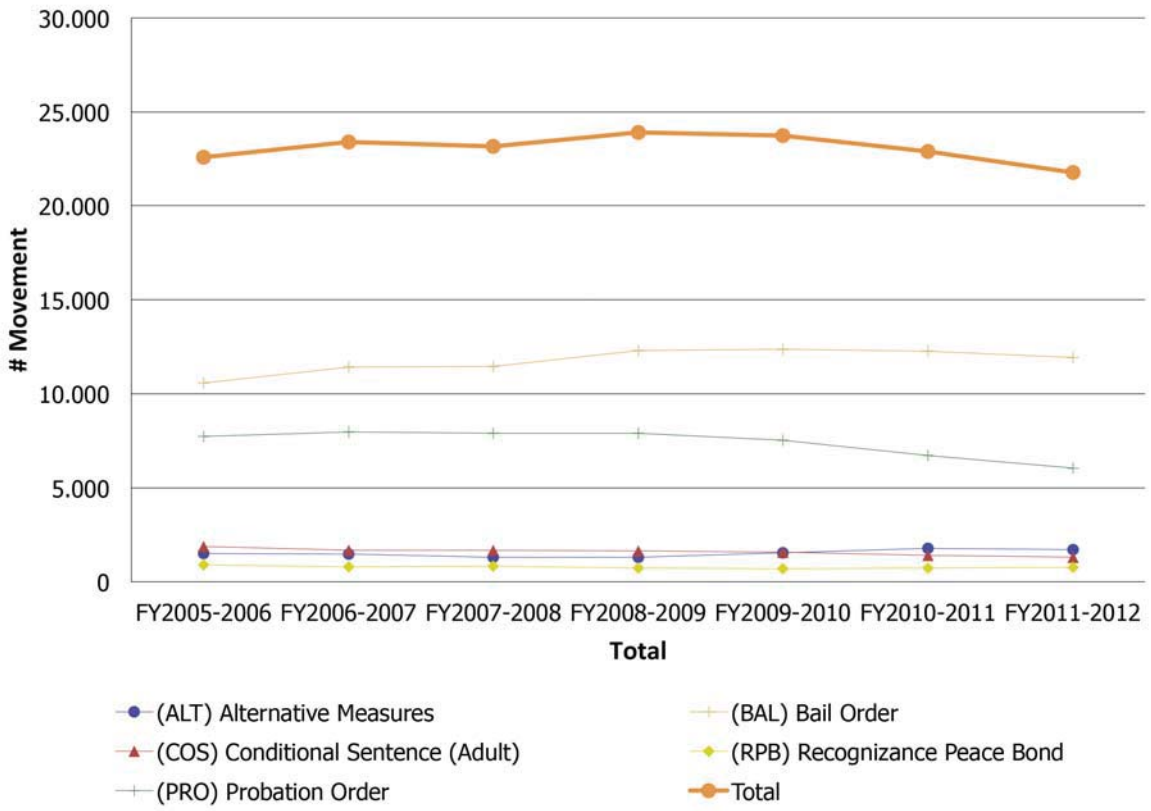
As discussed in 3.16, corrections has seen a steady increase in person counts over the last decade.[39] This has arisen because of longer periods under pre-trial and sentenced supervision, both in custody and in community corrections.

3.16 ADMISSIONS TO COMMUNITY CORRECTIONS

Annual admissions to community corrections (which refers to supervision of persons in the community) have remained relatively stable in the past seven years, ranging from approximately 21,800 to 23,900.[40]

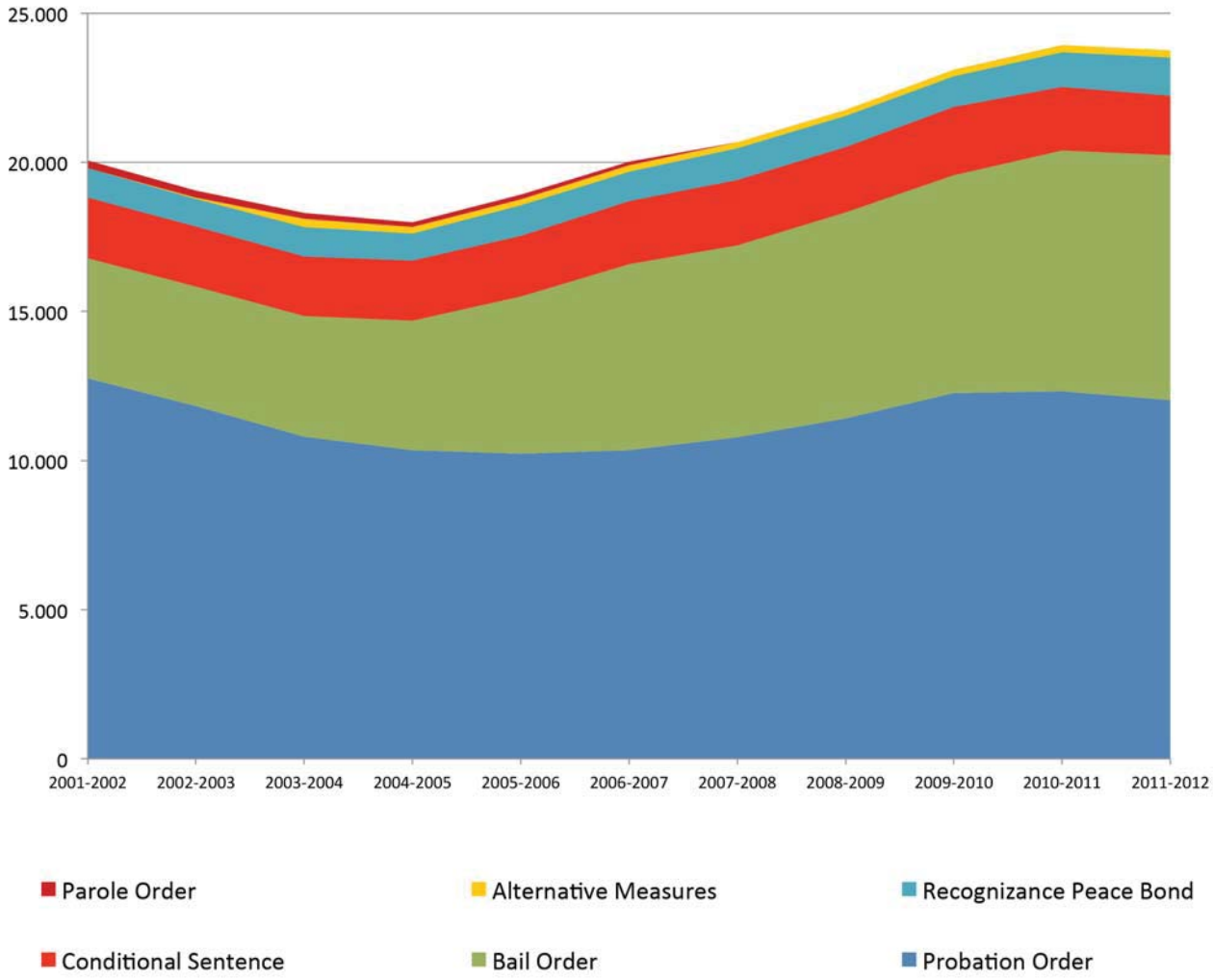
Despite the stability in admissions, the population of people under supervision has grown, from about 20,000 to around 24,000. The increase in the population under supervision is driven by increases in the length of all orders—sentenced community supervision orders as well as bail supervision orders.

ADMISSIONS TO COMMUNITY CORRECTIONS



38 British Columbia Ministry of Public Safety and Solicitor General, Corrections Branch, *Strategic Plan BC Corrections 2010-2013*, at p. 2, online: British Columbia Ministry of Justice <www.pssg.gov.bc.ca/corrections/pdf/strategic-plan-2010-2013.pdf>.
39 See: British Columbia Ministry of Justice, "Criminal Justice Trends 2011/12" (August 2012) [unpublished], Slides 37, 38, 63 and 65.
40 Chart provided to the BC Justice Reform Initiative by Corrections Branch.

COMMUNITY CORRECTIONS CASELOAD BY ORDER TYPE

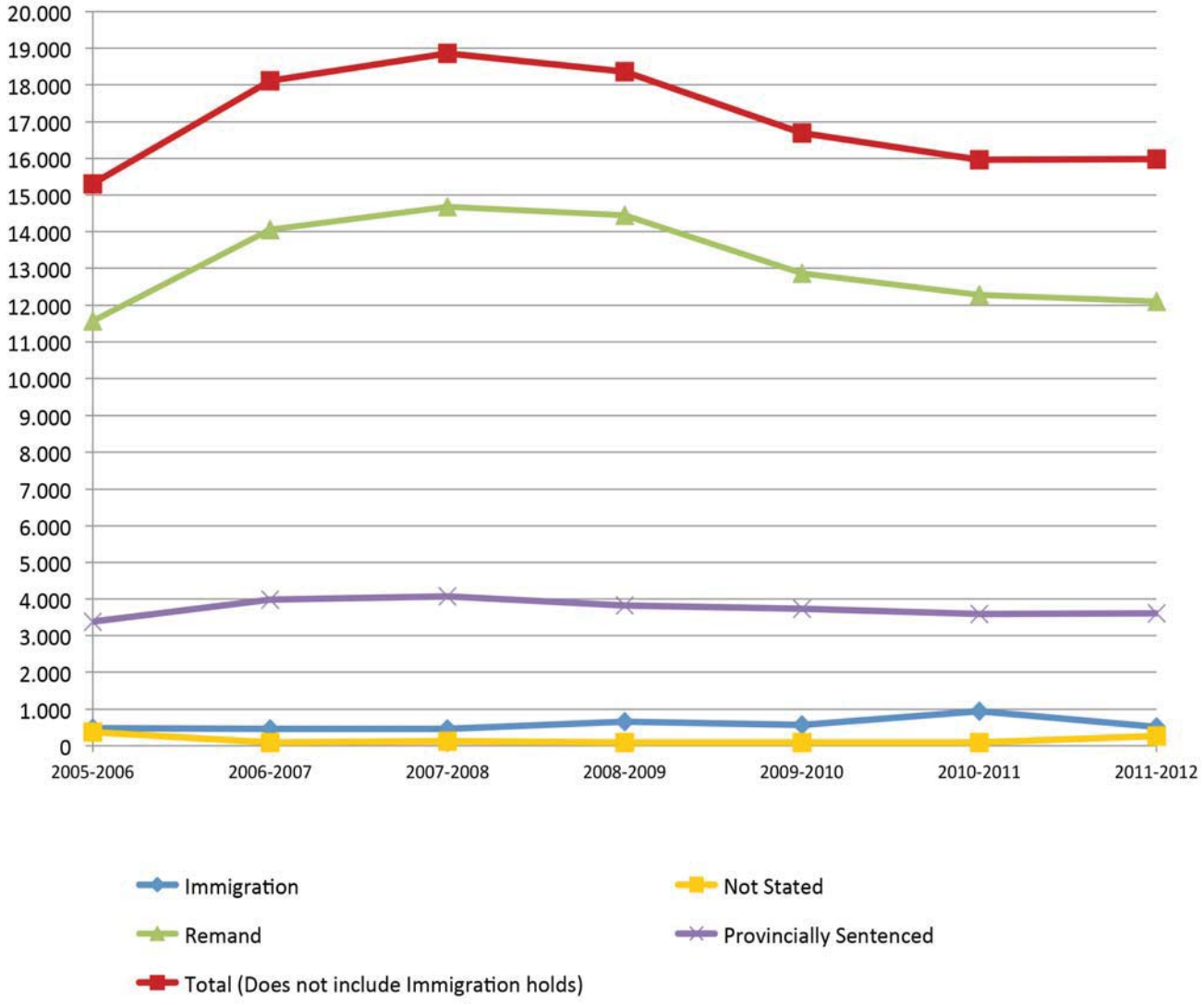


3.17 ADMISSIONS TO CUSTODY

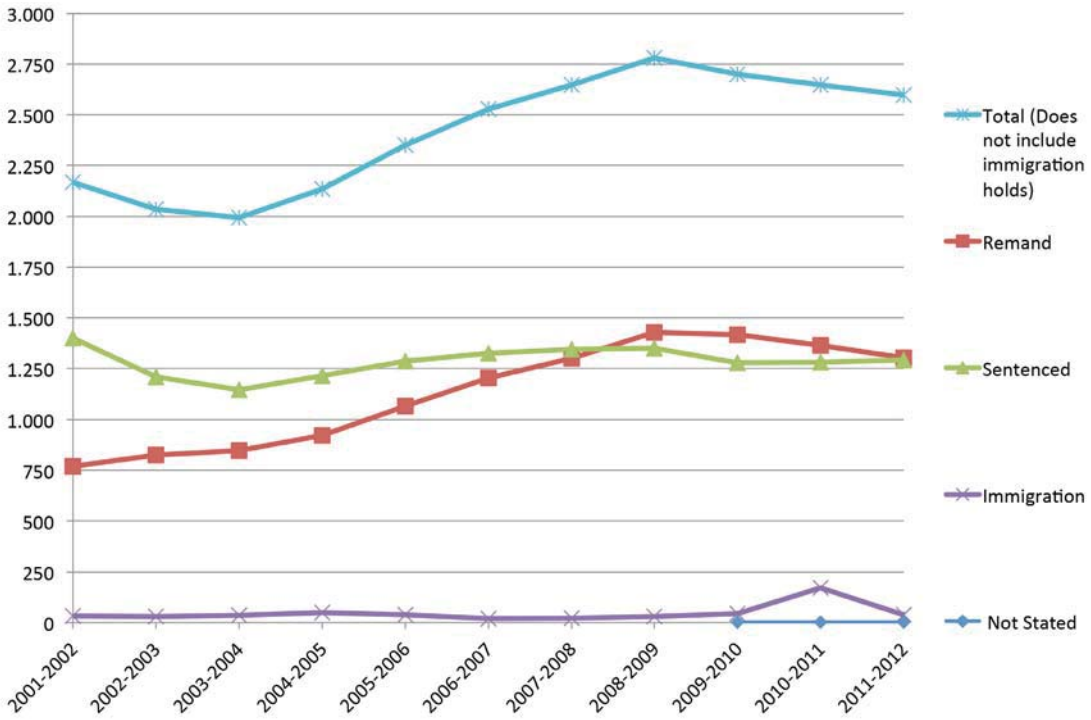
In the last seven years, annual admissions to custody (i.e., incarceration) increased to a peak of about 19,000 in 07/08, but have since decreased to around 12,000, about the level they were in 05/06. This trend, both up and down, is due to a number of issues, including the flux in remand admissions and the arrivals of illegal migrants. The remand population used to account for one-third of inmates, but is now half. In addition, the majority of inmates who receive a jail sentence are initially admitted through remand: this comprises about 75% of admissions to custody.

Despite the drop in admissions, the corrections population continued to grow until 08/09, when it began to drop slightly. This was the year that the percentage of remanded inmates in our provincial prisons exceeded the percentage of sentenced offenders in prison. The average length of custodial stay for both remand prisoners and sentenced offenders has increased: in the case of sentenced offenders, from an average of 60 days to 70 days, while for remand prisoners the stay increased from around 30 days to about 38 days.

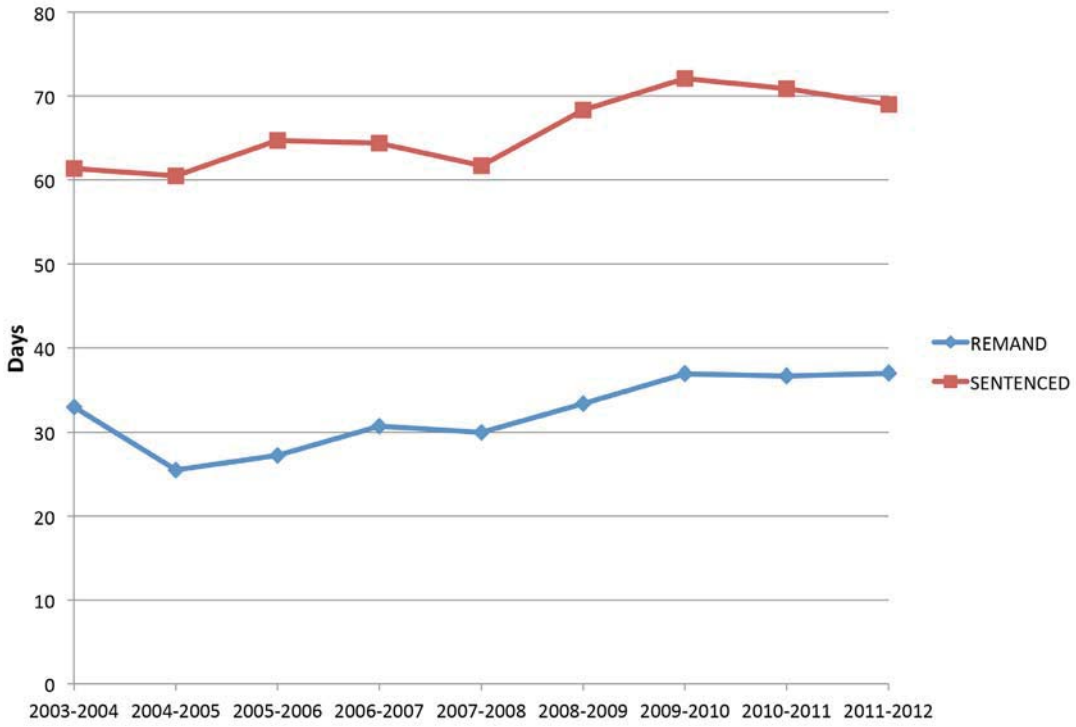
CUSTODY ADMISSIONS



AVERAGE DAILY CUSTODY CENTRE INMATE COUNT



AVERAGE LENGTH OF CUSTODIAL STAY



3.18 USE OF ALTERNATIVE MEASURES

Alternative measures programs that accept referrals from the prosecution are run by corrections staff in communities across the province. In addition, there are 32 restorative justice programs funded jointly by the province and the federal government, run by First Nations justice organizations, primarily in northern remote communities.[41]

Over the last six years, referrals from Crown to alternative measures have been stable, at 4% to 5% of cases coming into the system—despite widespread support for the use of alternative measures, including restorative justice, for less serious offenders and those who present a low risk of re-offending. However, the rate of matters actually resolved through alternative measures has remained at 2% to 3% of cases. The reasons for this lower rate include assessment by corrections that the accused is not suitable for alternative measures, or refusal by the offender to participate, or new evidence that causes Crown to withdraw their referral.[42]

There have been a variety of initiatives to increase the appropriate use of alternative measures, most recently a pilot project to provide early corrections risk assessment to prosecutors considering the possibility of alternative measures.[43] Generally we understand that referrals have not increased significantly, but further work is warranted to understand the reasons for this.

Although the provincial average rate of referrals and resolution has remained relatively stable over the last six years at least, it has been suggested that there are a few communities that have managed higher referral rates, and that the reasons for this warrant study. Understanding these differences and the reasons for them may help ensure that cases appropriate for alternative measures are diverted at an early stage of the criminal process.

There are also approximately 45 community programs, known as community accountability programs (CAPs). These are volunteer-driven programs which receive minimal support from the province—$2,500 a year—to support training and administrative support for the delivery of restorative justice services. These programs are primarily police diversion programs, and their clients are primarily youth, although some accept adult referrals.[44]

3.19 ARE CASES BECOMING MORE COMPLEX?

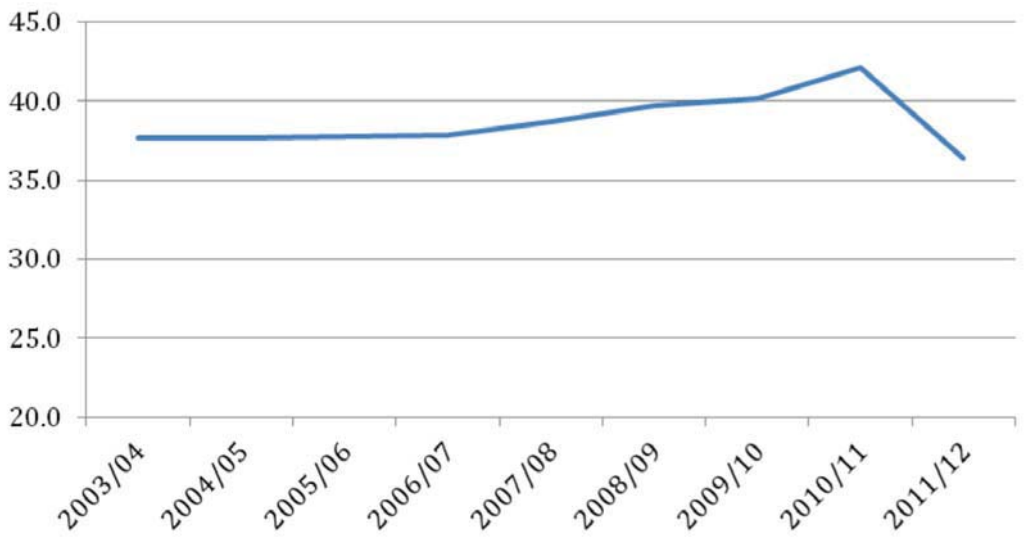
There is a strong belief among criminal justice system participants that cases and offenders are becoming more complex, and that this is the principal reason that cases seem to be taking more time and are becoming more expensive. In order to better understand the complexity of cases, the Criminal Justice Branch has undertaken a substantial project to analyse criminal cases and to identify the factors that may be associated with complexity.[45]

The analysis to date has attempted to measure the complexity of cases in relation to three different elements of a criminal case: the charge assessment process; the characteristics of the participants involved—accused, witnesses and victims; and the complexity of in-court work. The work includes all criminal cases except "mega cases" and Court of Appeal files.

The index measures the "weight," or amount of work required of each file associated with each RCC received from police and other investigators. It takes into account a variety of different factors associated with the file, which are available in the Court Services database known as JUSTIN. Not all factors thought to be relevant are captured in JUSTIN, which is a limitation with the index developed to date. The complexity index is a set of formulas based on a combination of objective JUSTIN data and subjective weighting provided by senior prosecutors. The

41 Justice BC, *Restorative Justice*, online: Justice BC <http://www.justicebc.ca/en/cjis/understanding/restorative/index.html>.
42 Information provided to the BC Justice Reform Initiative by the British Columbia Ministry of Justice, 26 July 2012.
43 British Columbia Ministry of Justice Evaluation Report to be finalized and available by Fall 2012.
44 For further information in relation to CAP, visit: <http://www.pssg.gov.bc.ca/crimeprevention/justice/index.htm>.
45 Information provided to the BC Justice Reform Initiative by the British Columbia Ministry of Justice (Criminal Justice Branch), 26 July 2012.

AVERAGE COMPLEXITY WEIGHT PER REPORT TO CROWN



Source: Criminal Justice Branch MIS, data updated at August 07, 2012

formulas are then applied to each file to calculate the weight of complexity of individual files.

Potentially significant factors not recorded in JUSTIN, and thus not available for inclusion in the model, include Charter challenges and arguments, wiretaps, disclosure, and the number and size of documents and exhibits sent from police.

The index includes a substantial number of factors, but as an example, the characteristics of the accused considered relevant include gang affiliation, criminal record, custody status, adult/youth, psychiatric exam, residence and whether an interpreter will be required.

The results of applying the index to criminal cases since 2003/04 is shown in the graph above, which shows a slight increase in complexity until 2010/11, and then a decrease in 2011/12. The data from 2011/12 is considered less reliable than earlier years, as there may be information about a case, as it progresses, that will be relevant to complexity, but not available until later in the process.

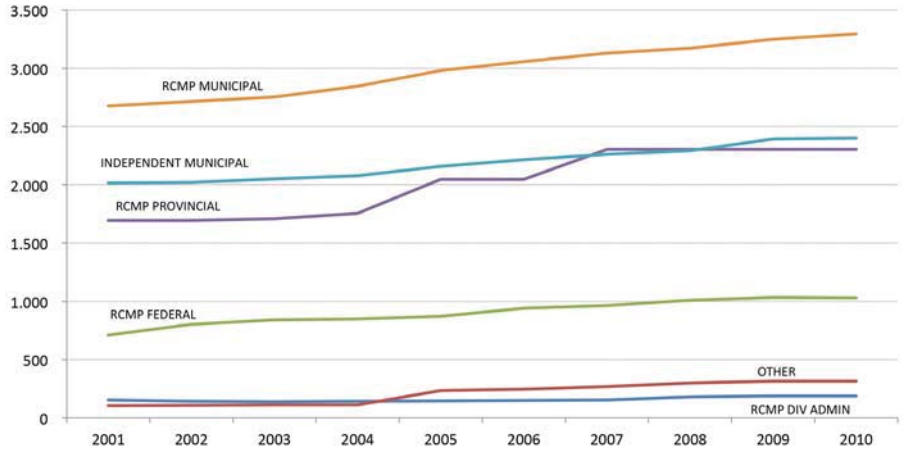
3.20 RESOURCES

The *Green Paper* produced by the Ministry of Justice in February of 2012 suggested that resources in the justice system have been steadily increasing, while the workload of the system has been stable or has actually decreased.

The increase in resources is most noticeable in relation to police, where authorized police strength in British Columbia has risen by 2,172 FTEs (full-time equivalents) in the past decade, for an absolute growth rate of 30% and a population-adjusted growth rate of 17%.

The budgets for both parts of the new Ministry of Justice saw significant increases starting in 2004/05. However, in the former Ministry of Attorney General (MAG), 80% of the budget increase funded required

ALL POLICE FORCES HAVE INCREASED IN STRENGTH
AUTHORIZED POLICE STRENGTH BY LEVEL OF GOVERNMENT, BC 2001–2010



Source: PSSG - Police Services Division

OTHER includes FNPS, FN-administered police services, transit police & international airport resources (YVR + YYJ);
RCMP DIV ADMIN funded by three levels of government

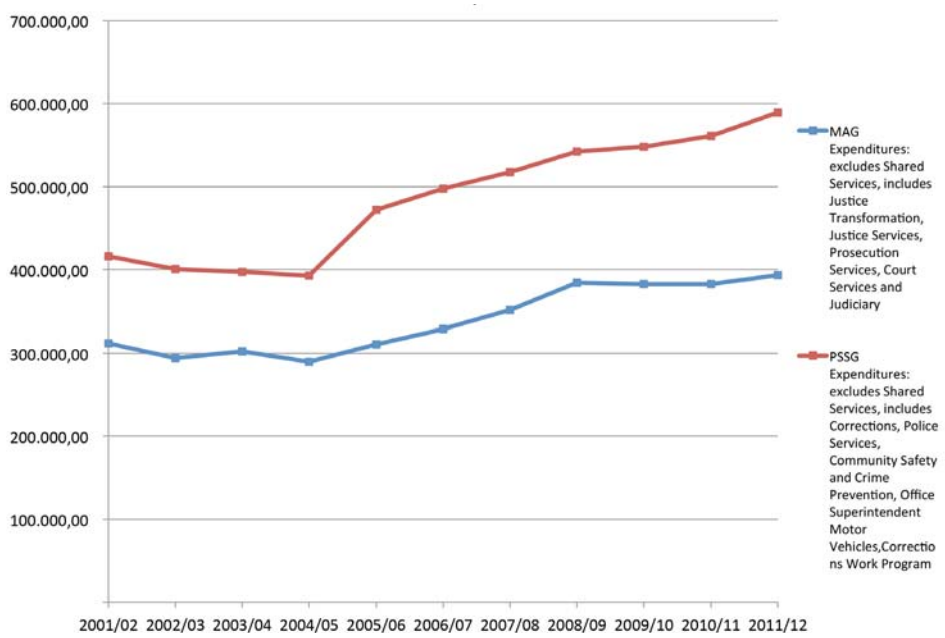
compensation increases rather than additional hiring.

Both the Court Services Branch and the Criminal Justice Branch have seen slight increases in their FTEs.

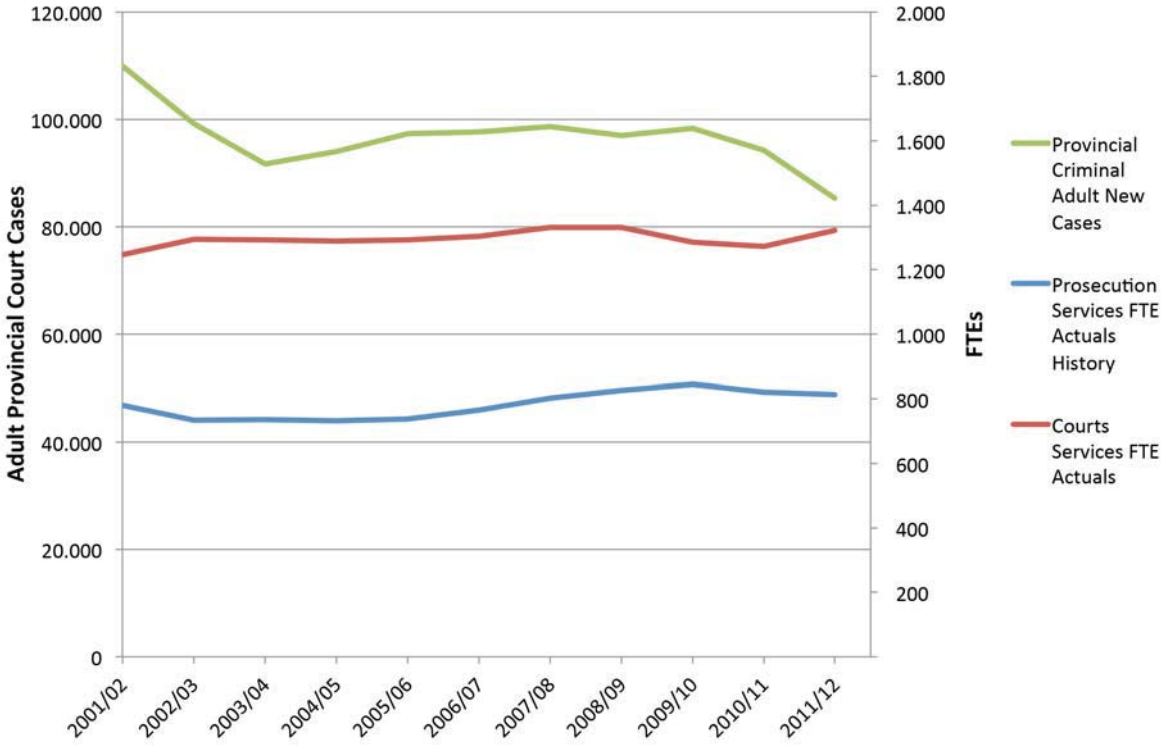
However, judicial FTEs declined in 2008/09 and have since declined marginally.

As has been well-documented, the funding for legal aid generally and criminal legal aid has been constrained since the mid-1990s. This chart shows the trend in core criminal legal aid and major trial funding since 2001/02 (see chart on p. 45).

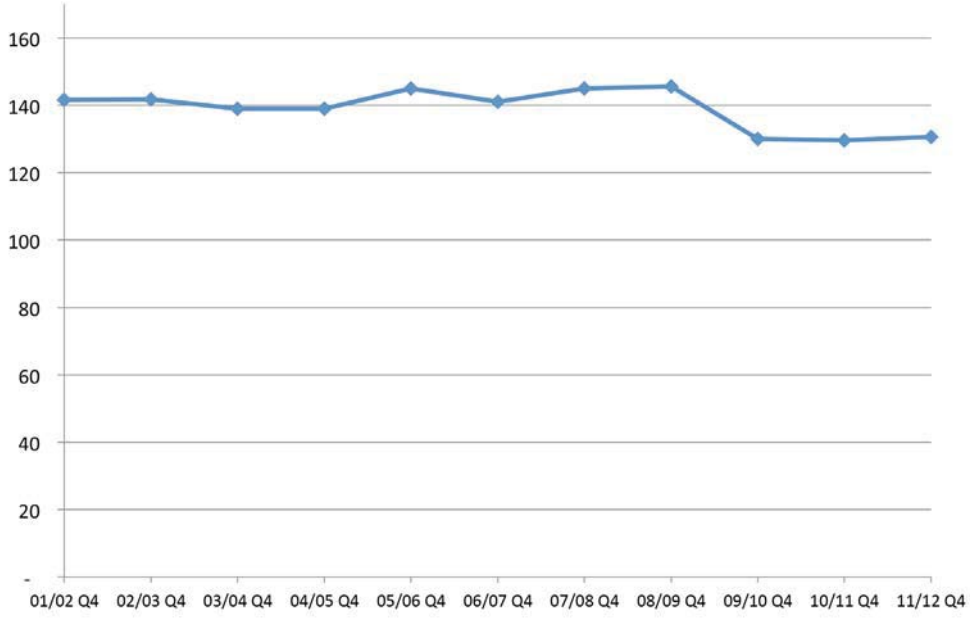
JUSTICE SECTOR EXPENDITURE TRENDS

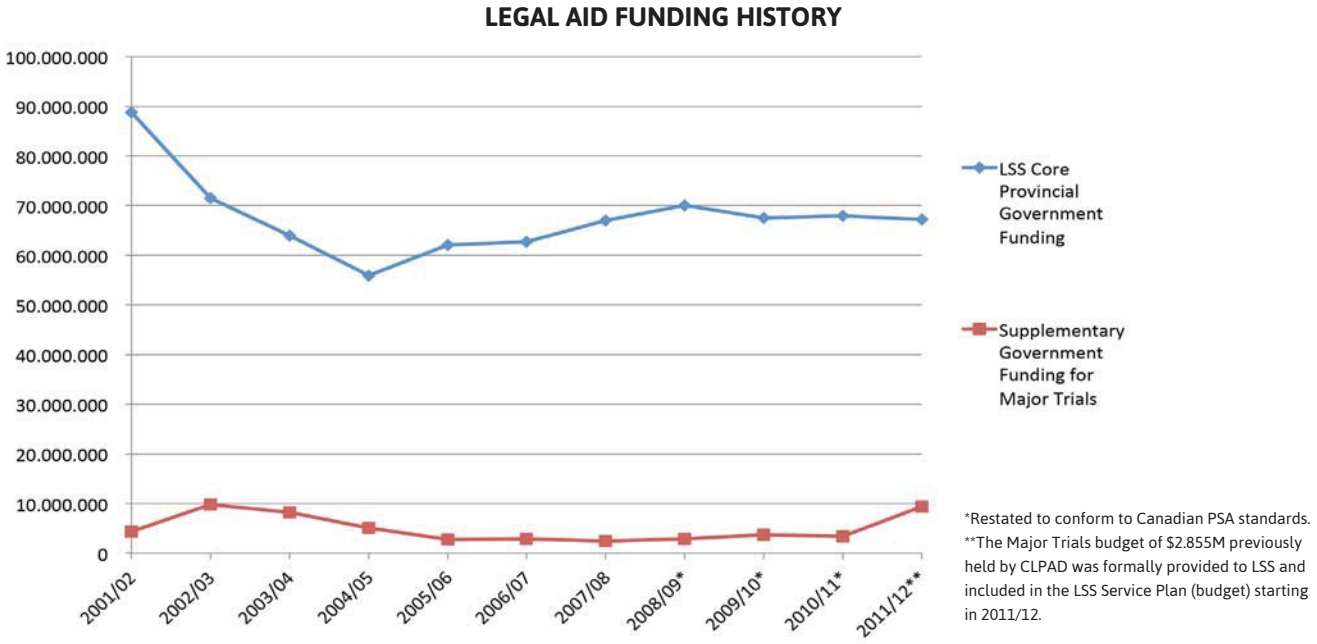


CRIMINAL JUSTICE AND COURT SERVICES FTES & ADULT PROVINCIAL COURT CRIMINAL CASES



JUDICIAL FTE USAGE





*Restated to conform to Canadian PSA standards.
**The Major Trials budget of $2.855M previously held by CLPAD was formally provided to LSS and included in the LSS Service Plan (budget) starting in 2011/12.

3.21 CONCLUSION

In summary, the following observations may be made about the current criminal justice system in British Columbia:

- The crime rate is decreasing, though it still remains higher than the central provinces and the Canadian average;
- The youth crime rate, and the use of incarceration for youth, has dropped dramatically over the last decade;
- The number of police in the province has increased significantly over the decade;
- The number of RCCs has remained relatively stable;
- The percentage of charges approved by Crown counsel has remained relatively consistent over the last 10 years;
- The Provincial Court criminal caseload, though previously stable, started to decline significantly in 2010 and dropped even more sharply in 2011/12. The makeup of those cases has changed significantly;
- The complexity of the Provincial Court caseload may have decreased in 2010/11, largely as a result of the introduction of the IRP initiative;
- The backlog of pending cases in the Provincial Court has fallen dramatically; however, the age of cases within the backlog remains of concern;
- The Supreme Court criminal caseload has dropped slightly in recent years;
- There has been a significant increase in administration of justice offences;
- Delays in the Provincial Court do not affect all cases, and delay tends to be longer in the highest-volume court locations;
- The majority of cases do not in fact consume a significant amount of court time;
- The number of trial appearances in Provincial Court has declined somewhat over the last decade;
- The majority of appearances are either administrative or for bail;
- The vast majority of cases are resolved without a trial appearance being scheduled;
- While the number of admissions to community supervision has remained stable, and admissions to custody have returned to previous levels, the population being supervised or incarcerated has increased; and
- The average length of stay in custody is increasing.

4. A CRIMINAL JUSTICE SYSTEM FOR THE 21ST CENTURY

What do we expect from our criminal justice system in this second decade of the 21st century? The demands for improvement identified during the consultations and from a review of current performance and recent experience here and elsewhere can all be related to expectations we have from a modern, high-performing system. What then would be the central characteristics of a 21st century model?

4.1 JUSTICE, FAIRNESS AND PUBLIC SAFETY

The accepted purpose of the criminal law is to uphold respect for the law and the maintenance of a just, peaceful, and safe society. We have a well-developed, highly professional system with several independent parts that aim at achieving these purposes by fulfilling their own roles within the system.

There is no debate about whether British Columbia's criminal justice system should be just and fair. We expect that all those involved in the justice system will act in a fair manner that is consistent with the ends of justice. That includes not only lawyers and judges but police officers, corrections professionals, community service providers and others. The rights reflected in the *Charter of Rights and Freedoms* are constitutional guarantees against government interference with central individual rights. They also reflect broader commitments to the rule of law, which include not only seeking redress but also shaping the social conditions that permit the flourishing of human potential for all citizens.

The public has a reasonable expectation that its desire for the safest possible community will be central to the goals of the criminal justice system. This includes but extends beyond punishment of offenders and extends to the goal of promoting a safe and peaceful society. Most importantly, this goal is measured not in the outputs of judgments or closed files processed by the system but in the restoration of peace and good order in the community and the reconciliation of offenders with crime-free and fulfilling lives.

During consultations it was often observed that "Everyone wants justice and fairness, *BUT*..." Many lawyers worry that seeking efficiencies or improved timeliness will undermine justice and fairness. Many are suspicious of management systems or a systems approach because they worry that these are merely disguises for cost-cutting. On the other hand, many within the system raised serious concerns about the lack of proportionality in the system, the lack of managerial capacity and authority, and the absence of system-wide goals and values.

One source of tension in the legal community arises from the expectation that the court system complement the pursuit of a safe community. After all, the fundamental commitment of our court system is that a person will be treated individually in respect of the proof of any charge brought against them by the state. But despite this tension, criminal law has long recognized outcome goals in the overall system. Sentences need to reflect not only public denunciation and specific deterrence, but also general deterrence, as well as the prospects for rehabilitation and reintegration into the community.[46]

A 21st century criminal justice system must therefore be managed effectively not only to be just and fair but to achieve the highest possible safety for our province.

46 *Criminal Code*, RSC 1985, c C-46, s 718; see *R. v. Proulx*, [2000] SCC 5, [2000] 1 SCR 61.

4.2 TIMELINESS

Timeliness affects everything. Not only does delay undermine public confidence in the system, but a culture of delay rewards the wrong behaviour, frustrates the well-intentioned, makes frequent users of the system cynical and disillusioned, and frustrates the rehabilitative goals of the system. The justice system's struggle with achieving timeliness in the criminal process is the most obvious concern underlying this review. This is seemingly a potential source of friction between any legal system and members of the public and their representatives. The English puritan John Cook, for example, observed in 1641 that the English court system was rife with long delays that frustrated justice in a host of manners. His proposals included faster decisions and structural reform of the courts.[47]

It is important, however, at the outset to recognize that delays in the criminal justice system are not all about delays in court processes. One initiative in the United Kingdom, for instance, was directed at reducing the time required for preparing police investigative reports from 54 days to two![48]

Similarly, it is important to recognize that delays come in different shapes and sizes within the court system itself. A delay in a guilty plea is not, from a systems perspective, the same thing as delays resulting from multiple continuations of an ongoing trial. A delay in the trial process may be as keenly felt as a delay in the investigation.

A 21st century criminal justice system must therefore achieve timeliness in the resolution of criminal events. Timely resolution addresses the need for both victim and community to see justice done. It demonstrates to the victim and community that their concerns are taken seriously and the system can be trusted with their complaint and concern for safety. It heeds the rights of the accused persons to have their guilt or innocence fairly established by law, without losing or undermining, through delay, opportunities for rehabilitation and reintegration.

An important question is what timeliness would look like in British Columbia's justice system. As I noted in section 3.10 of this report, almost 30% of cases in Provincial Court are resolved within 30 days of their first appearance in court, while 50% are resolved in a little more than three months. However, the rest take longer, sometimes much longer, and cases in Supreme Court—certainly the ones in the media—can take years to complete.

It is my view that the criminal justice system needs to set some much more ambitious targets for the resolution of criminal matters. The recent White Paper released in the UK, Swift and Sure Justice,[49] proposed targets of only days between the reporting of minor offences and their resolution. This compares with our common practice of a period of six to eight weeks between the alleged commission of the offence and the first court appearance for all offences where the accused is not detained in custody. It is certainly the case that some matters are resolved before the first court appearance, but this is not the norm. It is all too common for nothing to happen until that first court appearance.

I do not propose to set out timeliness targets for the justice system. That would require much more focused and detailed consultation than I was able to undertake within the limits of this review. But I recommend that a priority of the criminal justice system be to systematically set much more ambitious targets for the timely resolution of criminal cases, taking into account the recognition that some cases will necessarily require more time than others.

4.3 EXPERTISE

The public has a reasonable expectation that the criminal justice system will be managed to achieve

47 See: Geoffrey Robertson, *The Regicide Brief* (London: Oxford University Press, 2009).
48 KPMG Briefing to the BC Justice Reform Initiative.
49 UK Ministry of Justice, *Swift and Sure Justice: The Government's Plans for Reform of the Criminal Justice System* (London: Ministry of Justice, 2012), online: UK Ministry of Justice <http://www.justice.gov.uk/downloads/publications/policy/moj/swift-and-sure-justice.pdf>.

its goals with suitable expertise. That expectation has been transformed by our modern understanding of how particular expertise can better address problems and manage systems. Outside the legal system people have become accustomed to clearly identified expertise in almost every facet of life, in virtually every profession, from people selling mountain bikes to those performing cardiac surgery.

Another source of friction in the justice community arises from the fact that these expectations of expertise in subject matter and management have only just entered the threshold of the criminal justice system. The challenge of introducing change to a legal system cannot be understated. One leading commentator on technology and the law titled his most recent book, concerning the challenges technology represents for the practice of law, *The End of Lawyers?*[50] A leading legal management consultant authored an article "Are Law Firms Manageable?"[51]

This modern expectation of expertise is often received by the justice system as a demand for specialization, but it is not limited to specialization. It frames the public's response to the justice system's handling of specific problems as well as its service standards. There is a generalized expectation in our society that particular problems will benefit from particular solutions and processes. The public expects that those entrusted with addressing problems will address them with particularity and effectiveness. We can no longer expect the public to passively accept the orthodoxies of our legal culture. Thus one woman, frustrated by a long-running criminal matter, asked me: "What profession can operate today without deadlines or any method of requiring a decision?"

One central orthodoxy that is now challenged by the public and those charged with making the system work is the effectiveness of structuring the system of justice around the aggregate effort of several independent but interdependent actors: the police, the prosecutors, the courts and the defence counsel. The expectation of expertise is not limited to deciding cases properly; it extends to meeting reasonable goals of service to the public and demonstrating expertise in management of the system as a whole.

Although controversial, these concerns have not gone unheeded. Many initiatives aimed at meeting modern expectations of expertise and management have been tried and are ongoing. The leadership within the justice system has not been blind to these new expectations, nor to the dangers to public confidence. Each of the justice participants have moved towards meeting these expectations, and as should be apparent from this report, many are striving to meet them with new approaches.

Any 21st century system of criminal justice must therefore deliver expertise appropriate to the system's need for management and the need for effective and appropriately crafted solutions.

4.4 ACCOUNTABILITY AND TRANSPARENCY

Many changes in our society have come together to create an increased demand for accountability on the part of all public institutions discharging the public interest. This demand for accountability has not gone unnoticed, and significant changes to the system have been made. Nevertheless, the ongoing profile of criminal events and criminal process means that the system is continually being held to account by the public.

The openness of the courts and the justice system to the public is an essential component of public trust and confidence. Modern information systems coupled with modern communication platforms have now created a high social expectation of transparency.

The recognition of the social dimensions of crime has increased the demand for fit punishments, effective rehabilitation, and restorative justice. The

50 Richard Susskind, *The End of Lawyers?* (Oxford: Oxford University Press, 2008). For more information, see: <http://www.susskind.com/endoflawyers.html>.
51 David Maister, "Are Law Firms Manageable?" (April 2006), online: David Maister <http://davidmaister.com/articles/1/92/index.html>.

recognition of the special relationship of victims to a proceeding has diminished the distance the system once placed between victims and criminal proceedings.

A modern criminal justice system has to address and meet the demands of the public to have their concerns taken into account. These concerns must be transparently reflected in the management of our justice institutions.

Similarly, a fully functioning criminal justice system must acknowledge that some of its necessary resources reside in the general community. Many features of the social dimension of both the detection and proof of crime, as well as its reduction and the reintegration of offenders, depend on effective work with and within the community.

For many reasons, a modern criminal justice system must frame a measured and appropriate role for the public in relation to its operations and goals.

Lawyers and judges alike can express distrust and fear of measures to improve accountability. One of the central features of our justice system is to have an independent bench and bar uphold the rule of law, even in the face of demands that it be dispensed with in the interests of socially popular ends, retribution or vengeance. However, there has never been a time or place where the rule of law has not ultimately depended on public support. There will never be a time again when one could be confident that most matters could be addressed within the system without the manner or timing being noticed. The explosion of transparency wrought by modern technology and information systems will not be reversed.

A 21st century criminal justice system will be accountable and transparent in meeting the public's expectations on all those measures critical to its performance of the public interest in justice.

5. CONTEXT FOR REFORM

The report has thus far reviewed some of the important facts concerning the criminal justice system and the characteristics a modern system should have. We will now review the context within which any reforms must take place.

The context for reform is best addressed by answering the following questions:

- What can be learned from the experience in other provinces or other jurisdictions addressing the same issues?
- What can we learn from the general trend in legal reforms?
- Where are the gaps between performance and expectations?

5.1 POLICY CONTEXT FOR REFORM

The policy context for reform includes the general trend in policy concerning court-based adjudication, the recent experiences in British Columbia in seeking better outcomes and improved processes, and the most salient lessons from the experiences elsewhere with respect to criminal justice reform. These are addressed here summarily and with greater detail in the annex to this report.

5.1.1 Lessons Learned from Previous Justice Reform Initiatives in Canada and Internationally

The 2009 study by Professor Dandurand on inefficiencies in the criminal justice process[52] is a helpful summary of lessons learned from reform initiatives. The review also looked at a substantial volume of materials gathered to directly review successes and disappointments here and elsewhere.

Justice systems across Canada and around the world have been concerned for many years that they are not functioning as well as they could and should, and are not meeting the expectations of an increasingly concerned public. Concerns have included

- Issues of delay;
- Lack of predictability and consistency in process;
- Insufficient attention to the concerns of victims and witnesses;
- Inefficient work processes, including multiple court appearances for administrative rather than substantive reasons;
- Work required on files which ultimately do not proceed to trial because the case collapses;
- Courtrooms booked but ultimately not used because of case collapse;
- Failure of the criminal justice system to be sufficiently concerned about outcomes, particularly in relation to mentally disordered or drug-addicted offenders; and
- General lack of concern about the public interest in the criminal process.

These concerns have led to a proliferation of reform initiatives designed to improve one or more elements of the criminal process, but unfortunately the problems have proven relatively intractable. The research has not been as comprehensive and compelling as one would like to see. However, there are some common elements in the research Professor Dandurand has identified, which I believe are important considerations in developing an effective agenda for reform. Interestingly, these common elements are not directly related to justice reform strategies. Rather, they are the critical factors that

52 Yvon Dandurand, *Addressing Inefficiencies in the Criminal Justice Process: A Preliminary Review* (June 2009), online: International Centre for Criminal Law Reform and Criminal Justice Policy <www.icclr.law.ubc.ca/files/2009/InefficienciesPreliminaryReport.pdf>.

must underpin substantial reform and culture change in any field of endeavour.[53] They include

- Ensuring that there is a good understanding of the roles of all of the participants in the criminal justice process, that all are involved in the development of the strategy and that they commit to working collaboratively across the system;
- An appreciation of the need for "systems thinking," which requires an understanding of the intricate ways in which the actions of one part of the system can affect the others. Not appreciating this leads to ineffective reform initiatives, with one part of the system inadvertently creating costs for the other parts or actually undermining program objectives in other areas;
- A clear statement of the goals and objectives to be achieved collectively and by each agency, preferably with explicit and measurable performance targets and expected timeframes;
- An implementation plan which provides for the precise strategic actions to be undertaken, precise timelines and a clear delineation of the respective responsibilities and undertakings of the agencies and people involved;
- Firm and committed leadership, which may be judicial leadership, but leaders may come from other sectors;
- Joint performance management groups created and supported at the local level, with their progress monitored centrally;
- The collection and timely analysis of relevant data to permit the ongoing monitoring of the performance of the system and the specific actions undertaken. Data on key performance indicators are generated on a regular basis and provided to all front-line professionals, managers and agencies as feedback;
- A process put in place to monitor changes that are achieved, manage their impact, make sure they are sustained, and deal with any resistance to change that may emerge; and
- The results achieved (or lack thereof) being made public to ensure that the criminal justice system remains accountable and transparent about its performance.[54]

Observations from the literature about factors in the criminal justice process that contribute to inefficiency include the following:

- Uncertainty about the process, rules, procedures and future decisions. These all seem to adversely affect efficiency, and the effectiveness with which the various actors in the system perform their function. Strategies to address this involve looking at the various points in the system where there is uncertainty: for example, where information is not properly transferred from one part of the system to another, where uncertainties are responsible for delays, where discretionary powers make the system less predictable, where tensions exist between competing objectives, where co-operation between agencies and individuals is most critical, and at the point at which the process has a regular tendency to become disjointed or disarticulated.[55]
- Uncertainties about the trial process were identified by the Australian Institute of Criminology as major contributors to trial collapse. These included uncertainties about the timelines within which the process is expected to take place, uncertainties about the pre-trial process and about when the trial will actually get started, and uncertainties related to the approach of both the prosecution and the defence, including the availability of legal aid funding.[56]
- The common practice of double or triple booking trials to try to ensure maximum judicial utilization—

53 Indeed, the article "Becoming a High Performance Court" published by the U.S. National Judicial Institute employs an approach that could be used for any complex system. See: See Brian Ostrom et al, "Becoming a High Performance Court", *The Court Manager* 26:4 at p. 39.
54 Yvon Dandurand, *Addressing Inefficiencies in the Criminal Justice Process: A Preliminary Review* (June 2009), online: International Centre for Criminal Law Reform and Criminal Justice Policy <www.icclr.law.ubc.ca/files/2009/InefficienciesPreliminaryReport.pdf>.
55 Yvon Dandurand, *Addressing Inefficiencies in the Criminal Justice Process: A Preliminary Review* (June 2009), at p. 11, online: International Centre for Criminal Law Reform and Criminal Justice Policy <www.icclr.law.ubc.ca/files/2009/InefficienciesPreliminaryReport.pdf>.
56 Yvon Dandurand, *Addressing Inefficiencies in the Criminal Justice Process: A Preliminary Review* (June 2009), online: International Centre for Criminal Law Reform and Criminal Justice Policy <www.icclr.law.ubc.ca/files/2009/InefficienciesPreliminaryReport.pdf>.

generally recognized as increasing inefficiency for other participants of the system who must prepare and attend court for cases which will not proceed.

- Effective case management or case supervision—generally seen as important to increase the certainty of a case proceeding effectively. However, a more refined view is emerging in the literature, and in the experience in British Columbia with the CCFM rules, that it is important to distinguish the cases that will benefit from case management from those that will proceed expeditiously in any event, in which case management is likely to add process rather than streamline it.
- Many commentators have noted the need to change legal culture from a culture of delay to one of timely case completion. The expectations of lawyers and judges have "profound effects on how long cases actually take to resolve."[57]

5.1.2 The Policy Trend Away from Court-Based Systems

In my view one of the most awkward facts facing our system is the general and continuing trend away from court-based systems of adjudication. The most recent example of this is the development of the IRP initiative in 2010, which was reinstituted during this review.[58] In order to fully understand the nature and depth of the challenges facing the criminal justice system, we need to acknowledge this historical trend, and any set of reforms needs to address the underlying concerns which have produced this trend away from courts.

5.1.3 Modern Growth in Tribunals

During the course of this review, amendments to the IRP provisions came into effect. The earlier introduction of this program had dramatic impact on the workload of the Provincial Court, and there is no reason to think that impaired-driving cases in the courts will ever return to previous levels.

This trend towards managing problems outside the courts has for a very long time been the dominant trend in policy. Before World War II, there were few tribunals in Canada, and they "operated essentially as branches of government" departments.[59] Shortly after the war, however, an increasing number of independent tribunals were established. They had a number of functions: to regulate the expanding economy, to adjudicate disputes arising from the administration of new social programs, to bring expertise to complex issues, and to remove certain matters from the courts.[60] As late as the 1980s, the province of Ontario saw the creation of 10 new tribunals every year,[61] and there are now approximately 700 adjudicative and regulatory agencies in Canada.[62] Disputes regarding securities regulation, workplace safety and compensation, labour relations, rental agreements, government licences, human rights complaints and a myriad of other disputes are regularly resolved through tribunals rather than courts. As former Chief Justice Antonio Lamer of the Supreme Court of Canada noted, "[T]he impact of administrative agencies on the lives of individuals is great and likely surpasses the direct impact of the judiciary."[63]

This long-running trend is important to this review because arguments in support of transferring subject matters from courts to tribunals are often based on a perceived inability by the court system to deal with matters benefiting from specialized attention. The courts also have to compete with the speed, economy, informality and expertise that

57 Ostrom and Hanson as quoted in Yvon Dandurand, *Addressing Inefficiencies in the Criminal Justice Process: A Preliminary Review* (June 2009), at p. 13, online: International Centre for Criminal Law Reform and Criminal Justice Policy <www.icclr.law.ubc.ca/files/2009/InefficienciesPreliminaryReport.pdf>.
58 See further discussion of the IRP Program in Section 1.1 of the Annex to this Report.
59 Robin Creyke, ed, *Tribunals in the Common Law World* (New South Wales, Australia: The Federation Press, 2009), p. 7.
60 Creyke, *Tribunals in the Common Law World*, p. 9.
61 R. Macaulay, *Directions – Report on a Review of Ontario's Regulatory Agencies* (Toronto: Queen's Printer, 1989), p. 15, as cited in Creyke, *Tribunals in the Common Law World*, p.13.
62 Creyke, *Tribunals in the Common Law World*, p. 7.
63 Antonio Lamer, "Administrative Tribunals: Future Prospects and Possibilities" (1991-92) 5 Can J Admin L & Prac 107, as cited in Creyke, *Tribunals in the Common Law World*, p. 8.

tribunals may provide.[64] When serving as chair of the Ontario Labour Relations Board, Rosalie Abella (now a judge of the Supreme Court of Canada) described the expansion of tribunals this way:

> We arose, of course, full panoplied from the forehead of the legislatures, who recognized that neither the courts nor bureaucracies were able to handle the volume of decision-making law and policy required. And so was born the administrative tribunal—part law, part policy, a push-me-pull-you two-headed creature designed to alleviate the burden of judges and bureaucrats.[65]

Procedures in tribunals are often intended to be less formal and technical than those of courts, and this may allow tribunals to operate in a more efficient manner that is also accessible to the average citizen. In addition, tribunal decision-makers may develop subject-matter expertise beyond what is held by judges, who are generally tasked with hearing a broader range of disputes. This special expertise was recognized by the Supreme Court of Canada when it described the deference that judges should grant to decisions of specialized tribunals.[66]

Critics of this trend point to the threat to the rule of law in effacing the difference between policy and law, in transferring adjudicative responsibility to non-lawyers, and in failing to provide the security of tenure and compensation provided constitutionally to the judicial branch. Critics suggest that administrative tribunals are attractive to government more for their responsiveness to direction by the executive branch of government than any supposed increase in expertise or efficiency.

This is an important debate, and one that I need not attempt to resolve here. For present purposes, however, I suggest that failing to measure up to the modern expectations already outlined will leave policy-makers unconvinced that the court system is capable of the type of change needed to make it a branch of government that meets legitimate expectations of quality and performance.

5.2 ARE THERE GAPS BETWEEN SYSTEM PERFORMANCE AND EXPECTATIONS?

As discussed in Section 4, a criminal justice system for the 21st century will

- Deliver a just and fair process;
- Seek the highest possible level of public safety;
- Engage appropriate expertise;
- Provide timely results; and
- Be accountable to the public.

How is our system in British Columbia performing towards meeting these demanding expectations?

The consultation process was critical to understanding how people within the system and members of the public view the current challenges.

5.2.1 Justice and Fair Process

Public opinion surveys show that the public believes the system does a good job of providing accused people with a fair trial and respecting their rights. Those same surveys also show that people do not believe that the criminal justice system does a good job of responding to the interests of victims and including them appropriately in the criminal process. For the most part, little information is provided to victims, witnesses, people working in

64 Hazel Genn, "Tribunals and Informal Justice," *Modern Law Review* 56, 3 (1993) at p. 395.
65 Rosalie Abella, "Canadian Administrative Tribunals: Towards Judicialization or Dejudicialization" (1988-89) 2 Can J Admin L & Prac at p. 2, as cited in Creyke, *Tribunals in the Common Law World*, pp. 9–10.
66 *CUPE. New Brunswick Liquor Corp*, [1979] 2 SCR 227 [*CUPE*]. See also Justice Iacobucci's description of the reasoning in *CUPE*: Frank Iacobucci, "Judicial Deference", (Address to the Conference of Ontario Boards and Agencies at Toronto, Ontario, 19 November 1998), at p. 10, "For further discussion of judicial deference to tribunals, see *Tribunals of the Common Law World*, at p. 10", online: Society of Ontario Adjudicators & Regulators <https://www.soar.on.ca/docs/speaker_docs/COBA-98_Iacobucci.pdf>. For further discussion of judicial deference to tribunals, see *Tribunals of the Common Law World,* at p. 10.

and around the justice system, or the general public.

Prosecutors are right to be proud of the fact that people are not charged with offences where, objectively, there is insufficient likelihood of being able to prove the offence. However, despite charge approval resting with the prosecution service, British Columbia still has a significant level of stays of proceedings (approximately 25%),[67] a level that has remained stable for a very long time. Stays can be entered at any point in the process, as information or circumstances change. However, on matters that are scheduled for trial, a significant percentage of stays are entered on the first day of trial. A far more timely system may see fewer stays of proceedings.

A wide range of views were expressed regarding disclosure. Substantial strides have been made in regularizing and planning for disclosure in larger criminal trials and complex investigations. It is widely accepted that any early resolution system will need to address disclosure to the defence.

5.2.2 Public Safety

Policing has become focused on strategies for reducing crime and affecting offender behaviour. These efforts, such as the prolific offender management strategy, attempt to intervene strategically to prevent and deter crime, and are based on a population analysis which focuses on crimes and likely offenders. However, there is no province-wide public safety strategy, nor is there a common vision for the kind of justice system that we want.

Generally I heard in the consultations that no one thinks the criminal justice system operates effectively as a system, and there is no common understanding of the overall goals of the justice system and the role that each participant in the process plays in relation to achieving those goals.

5.2.3 Expertise

The quality and dedication of people working within British Columbia's criminal justice system is very high. People are determined and willing to work hard in the public interest. However, generally speaking, the criminal justice system has not benefited from modern thinking about how to change systems and organizational culture.

This is certainly starting to change. In addition to the traditional litigation skills, there is a growing recognition that other skills are also valuable, such as resolution and managerial skills. The courts have responded to the expectations of expertise in a variety of ways, though without creating a new specialized criminal court or division. In many respects the Provincial Court is a specialized criminal court in fact if not in form. The Supreme Court Criminal Law Sub-Committee has a Criminal Pre-Trial Conference Pilot Project, which has now been extended to all Supreme Court registries.

During the consultations there was widespread support and several suggestions for specialized or problem-solving courts. There are a number of initiatives and projects ongoing which offer particular solutions to different problems and which are addressed in the Annex.

Both institutional participants and members of the bar expressed concern over the management of large and "mega" cases that consume a huge amount of resources across the criminal justice system. In large and complex criminal cases, meeting modern expectations of performance is challenging.

Many years ago there were dramatic differences from one region to another and one courthouse to another as to atmosphere, procedure and approach. Indeed, a high degree of autonomy was exercised by individual judges, particularly in those courthouses which had a small number of resident judges. There remain significant regional differences, although the process of achieving province-wide consistency has been successfully pursued by the prosecution service, the Provincial Court and LSS. British Columbia has been well-served by this modern attention to quality and consistency in all regions of the province. Current

67 Statistics Canada, *Adult Criminal Court Statistics, 2008/2009* (Summer 2010, Vol. 30, No. 2), at p. 28, Table 3, online: Statistics Canada <http://www.statcan.gc.ca/pub/85-002-x/2010002/article/11293-eng.pdf>.

concerns over regional differences understandably revolve around differences in the type and level of crime, and local resource decisions concerning municipal police priorities. In local communities, relationships between the prosecution service and the defence bar significantly influence the pattern and character of demands for judicial and court resources.

5.2.4 Timeliness: A Culture of Delay

There is a widespread perception that timeliness is a problem throughout the system. However, it is clear on any analysis that concerns differ significantly between the different courts and different types of cases.

In the course of the review it became apparent from many conversations around this topic that our legal and judicial culture sends a variety of signals that reinforce the sense of an overall culture of delay—the absence of regard for starting times at the beginning or during the course of a court day, for example, repeatedly referred to as a relatively recent and unfortunate signal. The number of unproductive appearances, which may not in fact delay matters, but leave the impression that nothing worthwhile has occurred while time is passing. Incomplete hearings which are continued to another time also signal a lack of discipline around management of the length of a hearing. The appearance of disproportionate process for less important matters can convey an underlying value that judicial time is freely available. Finally, the sense that an adjournment is granted in some circumstances when it can be reasonably inferred that it is being sought for its own sake sends the signal that many other values take priority over timeliness.

While there can be a legitimate debate over how often any or all of these occur, I can report that delay is a common feature in candid conversations with those who care deeply about the delivery of justice in the province and are hopeful for improvement.

Any prescription for improving British Columbia's experience should proceed from a diagnosis of why this would occur in so many common law (and other) jurisdictions and over such a long period of history.

The public criticism of British Columbia's handling of the Stanley Cup riots was energized in no small part by the reports of British courts sitting overnight during their extensive riots in the summer of 2011, with offenders being tried and sentenced within hours or days of their arrest.[68] Without going into the detail of the advantages and disadvantages of British Columbia's approach, it is notable that the very same example raised concerns about the normal performance of the British system![69] Indeed, the recently released British white paper strongly criticizes the relatively short time period required to resolve minor offences in the British system as still being too long.

It remains fair to say, as did Chief Judge Metzger in 1998,[70] that we have a culture of delay within the justice system. However, during the consultations it was repeatedly observed that to be effective the proposed goals need to be aligned with incentives for the professionals within the system. But for those of us who are frequent users of the court system, a clear analysis of delays reveals an awkward fact: longer timelines have more immediate benefits than burdens for all the professionals within the system—prosecutors, defence counsel, judges and staff.

Members of the public and many of those involved in the system frequently observed that we have permitted the growth of a culture which has little regard for the sitting hours of the court, time limits required for stages of the process, or other time-related matters. Several veterans at the bar expressed frustration that court does not

68 For example, see: Sunny Dhillon, "BC Public Points to Britain to Slam Vancouver's Riot Response", *The Globe and Mail* (2 January 2012), online: The Globe and Mail <http://m.theglobeandmail.com/news/british-columbia/bc-public-points-to-britain-to-slam-vancouvers-riot-response/article1357328/?service=mobile>.

69 UK Ministry of Justice, *Swift and Sure Justice: The Government's Plans for Reform of the Criminal Justice System* (London: Ministry of Justice, 2012), at p. 3, online: UK Ministry of Justice <http://www.justice.gov.uk/downloads/publications/policy/moj/swift-and-sure-justice.pdf>.

70 Chief Judge Robert W Metzger, *The Report of the Chief Judge: Delay and Backlog in the Provincial Court* (Victoria: Ministry of Attorney General, 1998), online: Legislative Library of British Columbia <http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs2012/319602/delay_and_backlog_in_the_provincial_court_of_british_columbia.pdf>.

appear to start on time, run on time or remain busy throughout the court day.

For counsel an extended court calendar makes the management of a large practice far easier. For private lawyers a higher number of cases can be managed within one practice. One can offer one's services to more clients, and in return clients can more easily secure counsel of their choice. For prosecutors, the benefits of delay appear more related to managing a heavy caseload. Some prosecutors acknowledged that a delay in a case may ease the workload that day, or put off a difficult decision to another day—and most likely to another prosecutor.

For courts, growing delays are the standard tool of dealing with growing case lists or other demands on the system. This is quite understandable in a system in which the extent of judicial time required for a matter is considered within the effective control of counsel. Where there are more demands than existing capacity, then either timeliness must be sacrificed or managerial tools must be developed to manage matters within the available judicial capacity—which would be largely contrary to our professional culture and expectations of a judge[71]. In general terms our existing culture treats judicial time as freely available to the parties, with the result that it is not treated as something that must be applied with economy. In some respects the system rations judicial time by delaying its availability to the parties, rather than by demanding it be used well and efficiently.

Increasing the length of time to trial is one of the few tools the court has to cope with increases in demand, evidenced in the number or length of cases. The amount of judicial capacity to adjudicate is regarded as relatively inflexible. During our consultations many people suggested that it would be counter-productive for many of the justice participants to search for new ways of addressing workload volumes, when the backdrop of every conversation seems to be increasing the number of judges, prosecutors and police officers.

5.2.5 Timeliness in the Different Courts

Timeliness raises very different issues in the different courts of British Columbia. The Provincial court needs to provide for a very high level of resolutions, with tens of thousands of cases requiring the determination of fit and appropriate sentences. Only a very small percentage of all cases proceed to trial in the Provincial Court, and very few trials are lengthy. Judgments are in most cases delivered on the spot.

In contrast, in the Supreme Court, most trials are far longer than in the Provincial Court and concern the most serious criminal offences. That Court has of course to deal with timeliness in the context of complex pre-trial proceedings, sits frequently with juries, and must deal with complexities arising from changes in the substantive law and procedures required to address disclosure and other multi-party issues.

In the Court of Appeal, the Court oversees a process which requires the completion of appeal materials, including transcripts and the consideration and determination of complex legal and procedural questions.

Over the course of the consultations the review often heard from members of the public and lawyers that those affected by criminal charges care about the time taken from the event to its resolution, and there is little or no information provided to people about when the case they are involved in might be expected to be completed.

5.2.6 Accountability

There have been substantial strides in making the work of the courts more transparent through greater openness, the use of modern technology and many other measures.

Despite the efforts of victim service organizations and victim advocacy groups, some victims still report being treated as an afterthought rather than a customer of the system.

There is a wide-spread perception that the system

71 For an excellent discussion of the assessment of judges and judging, see the recent speech by former judge The Honourable Ian Binnie,, "Judging the Judges: May they boldly go where Justice Rand went before", Western Law (16 February 2012), online: *Western Law* <http://www.law.uwo.ca/News/2012/02/justice_ian_binnie_delivers_the_4th_annual_coxford_lecture.html>.

allows some defence counsel, in their client's interest, to successfully game the system and achieve dismissals or stays of cases by successfully manoeuvring the opportunities of delay to the point where the charges become unprovable.

Despite the many initiatives to improve the system and the relative rarity of outrageous results, the public has low confidence in the system as a whole. During consultations the ongoing problem of delay was overwhelmingly the factor mentioned as lowering respect for the system.

The main points emerging from the review include

- Public opinion surveys show that the public believes that the system does a good job of respecting the rights of the accused and of providing them with a fair trial;
- Those same surveys also show that people do not believe that the criminal justice system does a good job of responding to the interests of victims and of including them appropriately in the criminal process;
- No one thinks the system is working as effectively and efficiently as it could and should;
- There is no common understanding of the overall goals of the justice system and the role that each participant in the process plays in relation to achieving those goals;
- There is no integrated plan for the criminal justice system and no coordinated plan for improving public safety;
- The system has not benefited from modern thinking about how to change systems and organizational culture;
- No one thinks that the system achieves results in a timely way overall, even though the majority of cases do resolve in a reasonable time period; and
- There is no common vision for the kind of justice system that we want.

6. JUDICIAL INDEPENDENCE

It is important to address at the outset the boundaries of judicial independence and its role in the reform process. The terms of reference direct me to report and make recommendations on the roles of the various justice system participants and on how collaboration and co-operation among them can be fostered. Specifically, I am directed to report on those matters in which each institution, for reasons of independence, should have exclusive decision-making authority.

At its core, judicial independence ensures that the judge will decide every case by the impartial application of the law to the facts. The centrality of the public interest in defining judicial independence was recognized by the Supreme Court in *Ell v. Alberta*: "if the conditions of independence are not interpreted in light of the public interests they were intended to serve, there is a danger that their application will wind up hurting rather than enhancing public confidence in the courts."[72]

In order to ensure that decisional independence is not undermined or blunted by indirect or administrative means, the arrangements for the hearing of a case—directly and immediately related to its disposition—must lie within the direction of the judiciary. Reasonable differences of opinion regarding what falls within this broader realm of judicial independence are significant to this review.

The manner in which judicial independence is exercised will influence the system's efficiency, however it is defined. There are a number of reasons for this. In broad terms, judicial decisions establish expectations for all parties concerned. The court's decisions guide defence counsel, who in turn advise accused persons deciding whether—and to which offence—they should plead guilty. Crown counsel, in deciding whether they can prove guilt to the required standard, are also guided in part by the decisions made by judges in other cases. Sentencing is similarly influenced by the sentences handed down by judges in similar cases.

Further, even the disposition of cases without trial requires judicial approval. The court retains jurisdiction to refuse a guilty plea, a joint submission on sentence, and even a stay of proceedings. This jurisdiction is for the protection of the accused and the public, and ensures that the disposition process is in accordance with the law.

Finally, the process expectations in place in the court play an important role in framing the parties' decisions. Many people agreed during the consultations that the court has become in effect an administrative "bring forward" system for both Crown and defence. For example, appearance dates are often selected without specific expectations, but with the hope that periodic judicial attention will move matters along. As already mentioned, the Provincial Court has a project to develop a significant reform to this approach to criminal process, which also implies a change to the culture within the system. A change to this culture requires firm and determined direction by the Provincial Court in an area that lies at the heart of judicial independence: the direction of matters before a judge.

The fact that delay may in any particular case favour one or the other party means that process decisions must be made impartially and in accordance with predictable rules overseen by an independent judiciary. An accused facing trial after a lengthy interval faces a long period of uncertainty. However, for some defendants delay puts off the inevitable and raises the prospects of

72 *Mackin v. New Brunswick (Minister of Finance)*, [2002] 1 SCR 405, at para 116, Binnie J, dissenting, as cited in *Ell v. Alberta*, 2003 SCC 35, [2003] 1 SCR 657, at para 29.

a defence that may only arise because of delay. In some circumstances delay by the prosecution may be construed as inimical to the interests of the accused. Indeed, process rights occupy a central role in our tradition, from the Great Writ of habeas corpus to the modern Charter guarantees, such as the right to a timely trial. At the heart of our system there is recognition that the behaviour of all parties before the court is influenced by its process expectations.

Thus judicial independence properly plays a role in any discussion of reform of the criminal justice system, even if it is often largely in the background.

The issue of the *interpretation* of independence has a prominent place in the *Green Paper* and in various public statements made during the term of the review, including the joint statement made by the three chief judges in the province. The implication is that some interpretations of independence are an obstacle to productive change and go beyond the accepted meaning of those terms. Given the importance of the issue and the profile of the topic in the public discussion concerning the review, it bears careful discussion before we turn to discussing recommendations for reform.

6.1 BACKGROUND

The central distinctiveness of judicial independence arises from the fact that our system of government is divided into three branches: the legislature, the executive and the judiciary. Judicial independence in this context refers to the independent nature of the relationship between the court and other branches of government.[73] In this role, courts are tasked with adjudicating disputes between the federal and provincial governments, safeguarding constitutional requirements, and ensuring that the power of the state is exercised in accordance with the rule of law.[74] It is this constitutional mandate that gives rise to the need to maintain the independence of courts, as an institution, from the executive and legislative branches of government.[75]

Despite the high value placed on judicial independence, it remains an unwritten constitutional principle. Judicial independence has roots in the requirement for an "independent and impartial tribunal" in s. 11(d) of the *Charter*, and in the preamble of the *Constitution Act, 1867*, which states that the Constitution of Canada shall be "similar in Principle to that of the United Kingdom." As such, it has been implied by the courts from these constitutional roots and explained in several decisions of the Supreme Court of Canada concerning provincially constituted courts.

Judicial independence has both individual and institutional dimensions. Individual judicial independence is the independence accorded an individual judge. Institutional independence is a form of collective independence that relates to the status of the judiciary as an institution.[76]

There are three elements to ensuring judicial independence: security of tenure, financial independence and administrative independence.[77]

Security of tenure means that judges can only be removed for causes related to their capacity to perform judicial functions, and only after strict procedural requirements have been met.[78]

Financial independence means that the salary of judges must be secured by law and not be subject to arbitrary interference by the executive.[79] Specifically, financial independence requires that an independent body be interposed between the judiciary and other branches of government to set or recommend the level

73 *Mackin v. New Brunswick (Minister of Finance); Rice v. New Brunswick*, 2002 SCC 13, at para 37, [2002] 1 SCR 405.
74 *Ell v. Alberta*, [2003] SCC 35, at para 22, [2002] 1 SCR 857.
75 *Beauregard v. Canada*, [1986] 2 SCR 56, at p. 70.
76 *Mackin v. New Brunswick (Minister of Finance); Rice v. New Brunswick*, 2002 SCC 13, at para 39, [2002] 1 SCR 405.
77 *Reference re Remuneration of Judges of the Provincial Court (PEI)*, [1997] 3 SCR 3 [*Reference re Provincial Court Judges*].
78 *Valente v. The Queen*, [1985] 2 SCR 673, 1985 CanLII 25, at paras 30-31 [*Valente*]; *Reference re Provincial Court Judges*, at para 115.
79 *Valente*, at para 40.

of judicial remunerations;[80] that under no circumstances may the judiciary engage in negotiations over remuneration with the executive or representatives of the legislature;[81] and that any reductions to judicial remuneration cannot take salaries below a basic minimum level required for the office of a judge.[82]

Administrative independence—most importantly for the purpose of considering reform—is defined as control by the courts "over the administrative decisions that bear directly and immediately on the exercise of the judicial function."[83] Administrative independence only attaches to the court as an institution, although it may sometimes be exercised on behalf of a court by its chief judge or chief justice.[84]

6.2 ADMINISTRATIVE INDEPENDENCE

Determining the precise content of administrative independence is not straightforward. As noted by the Supreme Court of Canada in *Valente*, opinions differ on what is necessary, desirable or feasible. The substance and procedure required to maintain judicial independence applies in particular to administrative independence.[85]

If administrative independence refers to decisions that bear "directly and immediately on the exercise of the judicial function,"[86] what decisions are protected? Several cases have considered what "judicial function" includes. They identify the following activities as within the "essential or minimum requirement" for administrative independence:[87]

- Assignment of judges;[88]
- Sittings of the court;[89]
- Court lists;
- Allocation of courtrooms; and
- Direction of administrative staff engaged in carrying out the above functions.

Administrative functions that fall outside the administrative independence of the judiciary have been established. Financial aspects of court administration (budget preparation, and the presentation and allocation of expenditures) and the personnel aspects of administration (recruitment, classification, promotion, remuneration and supervision of support staff) go beyond the administrative independence of the courts.[90] These financial and personnel aspects of administration do not fall within the scope of administrative independence because they do not bear directly and immediately on the exercise of judicial function.[91]

Administrative functions that fall outside the administrative independence of the court properly remain for direction by the legislative or executive branches of government. It is important to remember that judicial administrative independence is an exception to the general authority of the provincial legislature with regard to the administration of justice in the province. Section 92(14) of the *Constitution Act, 1867*, grants this power, stating that in each province the legislature may exclusively make laws in relation to:

80 This body is intended to depoliticize decisions regarding judicial remuneration. Its decisions are not binding on the executive or legislature but the executive or legislature have to justify departing from them: *Reference re Provincial Court Judges* at para 133.
81 This does not preclude chief justices or judges, or bodies representing judges from expressing concerns or making representations to governments regarding judicial remuneration: *Reference re Provincial Court Judges*, at para 134.
82 *Reference re Provincial Court Judges*, at para 135.
83 *Valente*, at 709.
84 *Reference re Provincial Court Judges*, at para 120. Note, however, that "important decisions regarding administrative independence cannot be made by the Chief Judge alone": *Reference re Provincial Court Judges* at para 275.
85 *Valente*, at para 25.
86 *Valente*, at para 52.
87 *Valente*, at para 49.
88 Also, *MacKeigan v. Hickman*, [1989] 2 SCR 796. This includes the re-location of judges to other geographic areas: *Reference re Provincial Court Judges*, at para 266.
89 This includes the days on which the Court shall hold sittings: *Reference re Provincial Court Judges*, at para 267.
90 *Valente*, at para 50.
91 *Reference re Provincial Court Judges*, at para 253.

> (14) The administration of justice in the province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

Although the provincial legislative assemblies must exercise their jurisdiction over the administration of justice in the province in accordance with the principle of judicial independence,[92] "it is inevitable and necessary" that relations exist between the judicial and legislative branches of government in carrying out judicial administration.[93] The authority of the province over administrative matters relevant to the court includes, but is not limited to

- Enactment of laws governing procedure in civil matters in Provincial Courts;[94]
- Organization of the province into judicial districts, including the definition of the territorial limits of judicial districts in both civil and criminal matters;[95]
- Initial appointment of judges and their assignment to particular jurisdictions;[96]
- Enactment of laws governing the appointment and retirement of judges and the number of judges required for a quorum;[97]
- Full control over the appointment and regulation of judicial officers such as justices of the peace;[98] and
- Other matters respecting the purely administrative functions of the court.[99]

On March 15, 2012, the Chief Judge and Chief Justices of the province issued a joint statement on "Judicial Independence (and What Everyone Should Know About It)."[100] The statement is a timely and important reminder of the importance of judicial independence, and it is useful that in the context of the review the public is reminded of its importance.

The assurance that the courts were willing to participate in reforms has received little attention but, as already mentioned, the courts have actively participated in addressing the concerns raised, and have sought input from some of the key stakeholders.

In two respects I believe the Supreme Court of Canada's decisions indicate important limitations on interpreting judicial independence as it relates to the subject matters of the review. First, the preservation of independence is in respect of decisions that "bear directly and immediately on the judicial function." This indicates clearly that the general administrative structure is not preserved constitutionally for exclusive management by judges.

Secondly, the concern that the courts must remain separate from other branches of government is not absolute, and refers to the "authority and function" of the courts. As McLachlin J. (as she then was) stated in *MacKeigan*:

> I do not say that the power in the courts to control their own administration is absolute, if by absolute what is meant is that in no circumstances can the Legislature or Parliament enact laws relating to the functioning of the courts or enquire into the conduct of particular judges.[101]

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92 *Mackin v. New Brunswick (Minister of Finance); Rice v New Brunswick*, 2002 SCC 13, at para 70, [2002] 1 SCR 405.
93 *MacKeigan v. Hickman*, [1989] 2 SCR 796.
94 *AG (Canada) v. Can Nat Transportation, Ltd*, [1983] 2 SCR 206. Note that the provincial legislature does not hold authority over procedure in criminal matters: See also *Knox Contracting Ltd v. Canada*, [1990] 2 SCR 338.
95 *R. v. Gagne*, [1990] 59 CCC (3d) 282, 1990 CanLII 5393 (QC CA), at para 56.
96 *Reference re Provincial Court Judges*, at para 266.
97 *MacKeigan v. Hickman*, [1989] 2 SCR 796.
98 *R. v. Bush* (1888), 15 OR 398 (QB), at p. 405, as cited in *Reference re Adoption Act*, [1938] SCR 398, at 406 (available on CanLII), as cited in *Ell v. Alberta*, 2003 SCC 35, at para 4, [2003] 1 SCR 857: "The administration of justice could not be carried on in the Provinces effectually without the appointment of justices of the peace and police magistrates, and the conclusion seems to me to be irresistible that it was intended that the appointment of these and other officers, whose duty it should be to aid in the administration of justice, should be left in the hands of the Provincial Legislatures."
99 *MacKeigan v. Hickman*, [1989] 2 SCR 796.
100 Courts of British Columbia, *Judicial Independence (And What Everyone Should Know About It)* (15 March 2012), online: Courts of British Columbia <http://www.courts.gov.bc.ca/about_the_courts/Judicial%20Independence%20Final%20Release.pdf>.
101 *MacKeigan v. Hickman*, [1989] 2 SCR 796, 1989 CanLII 40 at p. 40; clarifying a broader statement in *Beauregard v. Canada*, [1986] 2 SCR 56.

In order to ensure that relations between the judiciary and other branches of government do not impinge on this "authority and function," the justice system must be set up in a way that avoids "incidents and relationships which could affect the independence of the judiciary in relation to the two critical judicial functions—judicial impartiality in adjudication and the judiciary's role as arbiter and protector of the constitution."[102] That is, judicial independence does not require separation of the courts and other branches of government in all ways, but only in so far as such a relationship may impact the core elements of judicial function. Indeed, the Supreme Court of Canada has repeatedly emphasized the importance of the three branches of government forming relationships and working together:

- "The heads of the judiciary have to work closely with the representatives of the Executive unless the judiciary is given full responsibility for judicial administration."[103]
- "It is impossible to conceive of a judiciary devoid of any relationship to the legislative and executive branches of government."[104]
- "The separation of powers does not prevent the different branches of government from communicating with each other."[105]
- "Our Constitution does not separate the legislative, executive and judicial functions and insists that each branch of the government exercise only its own function."[106]

It might be expected that the comparatively recent constitutional recognition of judicial independence in such matters as judicial compensation and elements of administration would occasion friction, and there has been some public conflict over matters such as the Provincial Courthouse closures in 2002.[107]

Even matters of judicial administrative independence (for example the allocation of courtrooms) is influenced by the financial and personnel decisions of the executive branch. In practical terms, the construction of courthouses depends on obtaining substantial capital from the public treasury.

By providing that the ADM of Court Services Branch co-report to the Chief Judge and Chief Justices and the deputy minister, provincial legislation acknowledges the wisdom and necessity of judicial involvement in administration.[108]

There are a number of measures that have been used to bridge this separation of powers. The Ministry of Justice and the judiciary regularly work together in seeking improvements to the administration of justice in this province. Two examples should serve to illustrate this point. In April 2002, the Ministry of Attorney General and the Provincial Court signed a memorandum of understanding whose preamble acknowledges that "the Ministry and the Judiciary must work together to fulfill their respective roles and responsibilities in the administration of Justice in British Columbia".[109] The two institutions agreed, among other things, to "enter into a protocol regarding a process for consultation on matters of administration affecting the Provincial Court."[110] This protocol acknowledged the important role that both the Attorney General and the Provincial Court play in the administration of justice, and committed the two institutions to working together. In particular, the protocol sought regular meetings to discuss matters of court administration, including

102 *MacKeigan v. Hickman*, [1989] 2 S.C.R. 796, 1989 CanLII 40 at p. 36.
103 *R v. Valente (No 2)*, (1983), 2 CCC (3d) 417 (ON CA) at pp. 432–433 as cited in *Valente* (SCC) at para 47.
104 *MacKeigan v. Hickman*, [1989] 2 SCR 796.
105 *Reference re Provincial Court Judges*, at para 256.
106 *Re Residential Tenancies Act, 1979*, [1981] 1 SCR 714.
107 On that occasion, there was litigation commenced by the Law Society of B.C. against the proposed closures on the basis of inadequate consultation with the Court. The litigation was settled and a revised number of courthouses were closed.
108 See*: Court of Appeal Act*, RSBC 1996 c 77, s 32; *Supreme Court Act*, RSBC 1996, c 433, s 10; *Provincial Court Act*, RSBC 1996 c 379, s 41.
109 *Memorandum of Understanding Between the British Columbia Ministry of Attorney General and Provincial Court Judiciary* (19 April 2002), online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/MemorandumofUnderstanding.pdf>.
110 *Memorandum of Understanding Between the British Columbia Ministry of Attorney General and Provincial Court Judiciary*, (19 April 2002), s 7.

facilities and staff planning, budget planning, technology, and management of court records.[111] This protocol continues to govern the holding of regular "protocol meetings."

In the last 20 years, the Ministry of the Attorney General and both the Supreme and Provincial Courts have jointly embarked on a variety of initiatives to improve criminal case processing and to reduce or eliminate delays.

6.3 WHAT JUDICIAL INDEPENDENCE MEANS TO JUSTICE REFORM

There are some matters that lie at the heart of decisional independence, such as the judicial management of cases. There is widespread agreement that the approach to case management needs changes, and judicial leaders have spoken out forcefully on the need for different approaches. Although we all have the right to offer comments or criticisms, we have constitutionally agreed to leave the determination of those matters to the judiciary.

With respect to those matters that are not squarely within administrative independence, the best approach is one that is collaborative and co-operative—for the simple reason that constructive change cannot be accomplished unilaterally by any of the participants. During consultations all the justice participants expressed the desire to be collaborative and co-operative, when that was compatible with their institutional independence.

We are fortunate that the Court has shown judicial leadership in this province. This includes the development of the CCFM rules (which has a recent counterpart in the civil rule reforms), performance measures for the Provincial Court, various backlog initiatives from the 1970s to the DCC, various problem-solving courts, and now the revised Court Scheduling Project. It is equally important that all the participants in the system, including the judges, work together to build on the successes of the past and learn from the disappointments.

6.4 JUDICIAL INDEPENDENCE: CONCLUSIONS

In framing the recommendations in this report, I have been guided by the following conclusions regarding judicial independence:

- Judicial leadership through its adjudicative role provides the legal framework and influences the decisions and actions of all other participants in the justice system.
- Some of the important areas of potential reform, such as judicial case assignment and trial management, fall squarely within the constitutional scope of judicial independence; judicial leadership and agreement are necessary to achieve reforms in these areas.
- Court administration is both constitutionally and appropriately an area of shared responsibility that needs to be managed in a co-operative and collaborative fashion.
- Judicial training and expertise has limited application in determining which cases belong in the system, or how best to influence the conditions of safety in the community, the needs of the victims, and the relationship between the community and the offender.
- The determination of outcomes from the justice system is primarily a matter for the executive working with the non-judicial justice participants and the resources of the community.
- Judges must carry out their tasks in ways that enhance rather than impair the achievement of outcomes for the community, the victims and the offenders. This must be compatible with the law and evidence in individual cases.

The principal consequence of these conclusions is that the judiciary is appropriately responsible

111 *Protocol Between Ministry of Attorney General and Provincial Court Judiciary* (19 April 2002), online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/ProtocoldocumentApril19.pdf>.

for the discharge of their important adjudicative functions. But in relation to the achievement of broader outcomes, they are best engaged in a persuasive and facilitative role. The Ministry of Justice must be held primarily responsible for the achievement of outcomes from the system.

Judicial leadership is important, and in some cases indispensable, in reforming both the criminal justice system and in reforming the legal culture. No other participant has the same persuasive influence on the participants. The recommendations here are intended to facilitate a setting within which judicial leadership can thrive and all the judges can feel fulfilled in contributing to improved results which uphold the rule of law and also advance the public interest in improved public safety.

6.4.1 Formal Participation in a System-Wide Planning Process

To bring about co-ordinated improvements to the justice system, reform initiatives in other jurisdictions have included participation by representatives of the judiciary. The UK National Criminal Justice Board (NCBJ), for example, included judicial representatives on the general strategic planning committee. Judicial participation on that board was seen as critical:

> The active support and participation of the judiciary, in the magistrates' courts and in the higher courts, are crucial to the delivery of this strategy, as they have been in delivering the improvements achieved so far. Issues in which they have played a major role are: ... improving joint working between criminal justice agencies, particularly through membership on the National Criminal Justice Board...[112]

I am encouraged that the Chief Justices and Chief Judge of the courts in British Columbia have expressed recently that "the judiciary is always open to discussing ways to improve the administration of justice."[113] I am hopeful that this willingness to participate in open discussions will include conversations regarding the general administration of the courts, particularly where this requires coordination between the Ministry, the judiciary and others.

In Ontario, such meetings have occurred on an annual basis for several years. The Office of the Auditor General Ontario noted in its 2008 annual report that, with regard to the administrative structure of the courts, representatives of the Ministry, judiciary, Bar and other justice partners and stakeholders have attended a "Justice Summit" held annually since 2002. These summits "make possible an improved discussion of key issues affecting the courts and have established several working groups and joint committees to respond to identified concerns." Outcomes from these meetings included the implementation of criminal case management protocols and the development of best practices for child protection cases.[114]

In Ontario, the institutional relationship between the judiciary and the Ministry in relation to the administration of justice has also been formalized through statutory recognition of the "Ontario Courts Management Advisory Committee." Pursuant to the Ontario *Courts of Justice Act*,[115] this committee is composed of:

- The Chief Justice and Associate Chief Justice of Ontario, the Chief Justice and Associate Chief Justice of the Superior Court of Justice, the senior judge of the Family Court, and the Chief Justice and Associate Chief Justices of the Ontario Court of Justice;

112 UK Office for Criminal Justice Reform, *Cutting Crime, Delivering Justice: A strategic plan for criminal justice 2004-2008* (London: Her Majesty's Stationary Office, 2004), at p. 19, online: Official Documents Archive 2 <http://www.archive2.official-documents.co.uk/document/cm62/6288/6288.pdf>

113 Courts of British Columbia, *Judicial Independence (And What Everyone Should Know About It)* (15 March 2012), online: Courts of British Columbia <http://www.courts.gov.bc.ca/about_the_courts/Judicial%20Independence%20Final%20Release.pdf>.

114 Office of the Auditor General of Ontario, *2008 Annual Report*, ch 3 (Ontario: OAG, 2008), at p. 215–216.

- The attorney general, the deputy attorney general, the assistant deputy attorney general responsible for courts administration, the assistant deputy attorney general responsible for criminal law, and two other public servants chosen by the attorney general;
- Three lawyers appointed by the Law Society of Upper Canada and three lawyers appointed by the County and District Law Presidents' Association; and
- Not more than six other persons, appointed by the attorney general with the concurrence of the judges mentioned in clause (a) and the lawyers appointed under clause (c).[116]

The statutorily mandated function of the Ontario Courts Management Advisory Committee is to "consider and recommend to the relevant bodies or authorities policies and procedures to promote the better administration of justice and the effective use of human and other resources in the public interest."[117] In essence, the Ontario *Courts of Justice Act* has created a statutorily recognized relationship between the judiciary, the Ministry and others on matters of administration.

I recognize, however, that the success of a multi-institutional committee such as was attempted in Ontario will depend not on the strength of the statute, but on the willingness of participants to commit to co-operative and coordinated approaches to the administration of justice. What I find appealing in the Ontario example is that the composition, mandate and reporting relationships of such an organization can be clearly articulated through legislation, contributing a sense of permanence and statutory recognition to such a committee, which may well be beneficial to its long-term operation.

In my view the statutory creation of a formal Justice Summit may help to improve relationships and to facilitate the transparency respecting progress of reform which I consider important to success. I address this recommendation as part of those arising out of the next topic.

115 *Courts of Justice Act*, RSO 1990, c 43.
116 *Courts of Justice Act*, RSO 1990, c 43, s 79.
117 *Courts of Justice Act*, RSO 1990, c 43, s 79(4).

7. CRIMINAL JUSTICE AND PUBLIC SAFETY COUNCIL

Section 4 outlined the modern expectations of a well-performing criminal justice system. How can we make those enduring features of our system in the context of our history, existing institutional structures and culture?

The reform must take place on two fronts. First, responsibility and accountability for the performance of the criminal justice system as a whole needs to be more clearly discharged by the Ministry of Justice. Second, institutional reforms should be considered within the mandate and organizations of the other justice participants in order to better align their organizations with the overall justice and public safety plan for the province.

In this section, I propose the establishment of a Criminal Justice and Public Safety Council. In order to obtain enduring systemic reform, a body such as the one I propose would be a better means than what is presently available.

This recommendation stems from the conclusion that there should be one principal management body operating under the Minister of Justice and attorney general. It should be responsible for overall planning, establishing performance standards, recommending resource allocation, overseeing institutional reform, overseeing cross-sectoral reform initiatives, and ensuring the Ministry is accountable to the public.

In making these recommendations I regard as the first priority the identification and articulation of system-wide goals and clear assignment of responsibilities to ensure they are achieved. In my view clarity and rationalization of duties and responsibilities within the Ministry are critical to achieving a better-functioning system. The details of public administration are important and may be vital to success, but are largely beyond my expertise. The final structures may well have to be framed differently than I suggest in this review.

7.1 CONTEXT

The Ministry of Justice was recently created in 2012 through the merger of the Ministry of the Attorney General and the Ministry of the Solicitor General and Public Safety.[118] The structure of the Ministry is set out in the organizational chart in Schedule 10. Although it is a single Ministry, there continue to be two deputy ministers. This recognizes the separate role of the attorney general, but makes provision for an additional role of chief operating officer, with responsibility for justice reform across the entire Ministry (and an associated cross-ministry reporting relationship). The chief operating officer role has been assigned to the deputy minister of justice and solicitor general. In addition, there are a number of committees and working groups used to help carry out the work of the Ministry. These include the Justice Reform Council (essentially the portion of the Ministry Executive Committee responsible for the criminal justice system), the Police/Crown Liaison Committee, and the Protocol Committee, which is the formal coordinating committee between the Ministry and the judiciary. Numerous other committees have been set up to deal with various issues of coordination.

As already noted, the Internal Audit & Advisory Services (IAAS) of the BC Ministry of Finance recently reviewed the provincial justice system, and in September 2011 reported that "it is clear that an

118 British Columbia Order in Council 51/2012 (8 February 2012), online: Queen's Printer <http://www.qp.gov.bc.ca/statreg/oic/2012/resume03.htm>. These functions are together in one Ministry in some provinces but are separated in others (generally the larger ones).

overall justice system perspective is lacking." Instead, according to the IAAS report published in February 2012, there is a "largely fragmented approach"[119] in the justice system. The paper also asserted that one of the barriers to constructive reform was a widespread "resistance to systems thinking."

There is no doubt that the justice system presents particular challenges to a systems approach by virtue of the nature of the various sectors. The relationship between the Ministry and the prosecution service is governed by the *Crown Counsel Act,*[120] which was amended in 1990 to provide a statutory separation between the prosecution service and the other parts of the Ministry. The assistant deputy attorney general is responsible for the prosecution service. In the event the deputy or attorney general wishes to provide direction as to the conduct of any individual matter, the direction must be in writing and gazetted. As well, in the event that the deputy or attorney general wishes to direct the prosecution service on a matter of policy, the assistant deputy attorney general is entitled to require that it be put in writing.[121]

The relationship between the Ministry and policing in the province is complicated by the existence of multiple organizations and funding sources. The province itself does not deliver policing services.

Under the *Police Act,*[122] the Ministry must ensure that an adequate and effective level of policing and law enforcement is maintained throughout British Columbia Policing in the province is provided mainly by the RCMP (federal, provincial and municipal forces) and independent police departments, including one First Nations–administered police service.

There are also several agencies that provide supplemental policing in British Columbia. For example, in the Lower Mainland area of the province, the South Coast British Columbia Transit Authority Police Service provides policing on and around the transit system—this police service is supplemental to jurisdictional police. Similarly, the Canadian National and Canadian Pacific railway police forces provide specialized law enforcement within the province. There are also enhanced police services at the Vancouver and Victoria International Airports, enhanced First Nations police services operating in numerous communities, and a number of integrated teams operating throughout the province.[123]

Although the province only directly funds the RCMP provincial contract, the ADM of Policing and Security Programs is responsible for ensuring the central oversight of all policing in the province, which (among other responsibilities) includes

- Monitoring the financial and operational accountability of provincial and municipal RCMP through policing agreements;
- Managing the contract with the RCMP for provincial policing;
- Establishing provincial policing standards for police service delivery and monitoring the quality and standards of police service delivery; and
- Providing leadership to facilitate innovative, proactive, evidence-based police service through restructured service delivery and technological advances.[124]

The BCACP serves an organizing function for the various police forces, but given the various funding streams and local priorities, it is fair to say that this is a positive but fragmented body of investigative agencies.

The Ministry is also responsible for the administration of the Provincial and Supreme Courts

119 Internal Audit & Advisory Services, British Columbia Ministry of Finance, *Review of the Provincial Justice System in British Columbia*, (September 2011), p. 1–3, online: British Columbia Ministry of Justice <www.ag.gov.bc.ca/public/JusticeSystemReview.pdf>.
120 RSBC 1999, c 87.
121 *Crown Counsel Act,* RSBC 1999, c 87 ss 5, 6.
122 RSBC 1996, c 367.
123 British Columbia Ministry of Justice, *Description of Policing in BC*, online: British Columbia Ministry of Justice <http://www.pssg.gov.bc.ca/policeservices/description/index.htm>.
124 British Columbia Ministry of Justice, *About Us*, online: British Columbia Ministry of Justice <http://www.pssg.gov.bc.ca/policeservices/about/index.htm>.

and the Court of Appeal, under the ADM of Court Services. The ADM of Court Services also reports to the Chief Judge and Chief Justices in relation to matters of judicial administration and related services.

Finally the Ministry is responsible for community and institutional corrections under the ADM of Corrections.

There are existing efforts to reduce the silo effect of independent justice participants who consider themselves primarily responsible for the discharge of the public trust in their area of the system. For example, the Ministry Service Plan states various province-wide goals and is updated regularly.[125] Each branch of the Ministry has its own strategic plan that feeds into the Ministry plan and is reported on annually.

In general it would appear that there is a sophisticated and well-thought-out structure for the articulation of planning and reporting for each aspect of Ministry work.

I am by no means the first reviewer to suggest that greater strategy and coordination would be desirable in the justice system. Previous attempts to achieve several of these characteristics have been attempted and, in my view, offer valuable insights on what elements will be necessary for successful reform.

7.1.1 BC Provincial Community Safety Steering Committee

In 2007, the BC government established the Provincial Community Safety Steering Committee (the Committee) in response to "unacceptable crime and victimization rates" in British Columbia.[126] The Committee was intended to exploit synergies between partnering agencies.

The Committee was created in 2007 and included the deputy ministers attorney general for Public Safety and solicitor general, Health, Children and Family Development, Education, and Employment and Income Assistance.[127] It also included the provincial health officer and representatives from the Office of Housing and Construction Standards, the Federal Prosecution service, Correctional Services Canada, the Union of British Columbia Municipalities (UBCM),the RCMP, municipal police and a criminology professor from Simon Fraser University.[128]

The Committee was supported by the Criminal Justice Reform Secretariat, which included a leader and members from corrections, the RCMP, victims' services, police services, the prosecution service, courts, youth justice and Justice Services Branch (JSB).

Despite the broad involvement of many groups both within and linked to the justice system, the Committee is generally not viewed as a success. In the course of my research and consultations, several aspects of this project, which I review below, offer guidance for the future.

In order to produce systemic change, a committee such as this one would appear to require a broad mandate that contemplates more than incremental advances. In this case, a discussion paper describing priorities for the Committee limited its scope from the outset:

> With limited infusion of new money it is important to identify a small number of problems of common interest which can be realistically improved through the application of collaborative and evidence-based practices.[129]

The priority targets selected by the Committee led to projects in support of the following: local priority setting, planning and public engagement;

125 See: British Columbia Ministry of Justice, *2012/13 – 2014/15 Service Plan* ((British Columbia Ministry of Finance, February 2012), online: British Columbia Ministry of Finance <http://www.bcbudget.gov.bc.ca/2012/sp/pdf/ministry/jag.pdf>.
126 British Columbia, Criminal Justice Reform Secretariat, "Discussion Paper: Priority Setting in the Provincial Community Safety Steering Committee" (21 January 2008), at p. 1.
127 Now the Ministry of Social Development.
128 Professor Raymond R. Corrado; BA (Mich State), MA, PhD (Northwestern).
129 British Columbia, Criminal Justice Reform Secretariat, "Discussion Paper: Priority Setting in the Provincial Community Safety Steering Committee" (21 January 2008), at p. 2.

healthy babies; assisting 10- to 14-year-olds at risk of criminal involvement; prevention and reduction of violence against women; prevention and reduction of child abuse; reducing activity of harmful offenders; and reducing street disorder.[130] These are valid and important priorities, and the Committee may well have advanced progress in relation to them.

However, in my view, one of the lessons learned from the Committee is that in order to effect systemic change, a committee such as this must be mandated to think beyond incremental changes. It must be tasked with proposing a vision for the justice system that goes beyond progress on a small number of problems of common interest. Without such a higher-level mandate or vision, progress may be limited to smaller, incremental improvements that do not achieve the ultimate agenda of ensuring a safe community.

It also appears that the Committee had no authority to influence the allocation of resources among justice system components, or to share accountability among its members. Rather, a description of the Committee states that members "remain accountable to their political or executive authorities, and make decisions within the policy and budget parameters determined for their position."[131]

During consultations, I often heard of the need to break down silos that exist in the justice system. Institutional participants need to work together. This includes discussion of how their various responsibilities and accountabilities relate and how their budgets may be applied synergistically. Building integration and strategic coordination into the criminal justice system requires consideration of how resources may best be shared among justice system participants. There must also be a frank dialogue among participants as to how their policies affect each other and how their actions should be held to account by the system as a whole.

Another lesson learned from the Committee is that, in order to achieve systems-level change, a multiparty planning structure must be encouraged to develop integrated plans from a budgetary, policy and accountability perspective. By restricting the accountability of committee members to their existing superiors, and by keeping the scope of their decisions within existing (and independent) policy and budget parameters, it is possible that Committee members were not sufficiently motivated to coordinate their funds and activities.

Finally, this Committee was never considered as the principal means by which senior Ministry leadership would carry on their work in relation to criminal law. In my view, its distance from the central work of senior leaders limited its effectiveness.

7.1.2 BC Criminal Justice Executive Committee[132]

The BC Criminal Justice Executive Committee, formerly the Criminal Justice Reform and Operations Committee, was a subset of the executive committees of the ministries of Attorney General, Public Safety and Solicitor General, and Children and Family Development (youth justice).[133] It comprised the deputy attorney general, the deputy solicitor general, and the ADMs responsible for the prosecution service, court services, legal aid, policing, corrections, community safety and crime prevention, youth justice and management services.

Although the Criminal Justice Executive Committee was designed to improve coordination and planning across the criminal justice system, in the end each ministry was responsible for creating its own strategic plan and incorporating all of the various ministry program areas—with each branch responsible for

130 British Columbia, Criminal Justice Reform Secretariat, "Discussion Paper: Priority Setting in the Provincial Community Safety Steering Committee" (21 January 2008), at p. 7.
131 Provincial Community Safety Steering Committee, "Terms of Reference and Mandate" (October 2009), at p. 1.
132 The current executive committee of the merged Ministry responsible for the criminal justice system is called the Justice Reform Council.
133 British Columbia Ministry of Finance, Internal Audit & Advisory Services, *Review of the Provincial Justice System in British Columbia* (September 2011), at p. 2, online: British Columbia Ministry of Justice <www.ag.gov.bc.ca/public/JusticeSystemReview.pdf>.

identifying its own strategic priorities and performance targets. The Internal Audit and Advisory Service of the BC Ministry of Finance reports that:

> It is unclear whether decisions made by the Criminal Justice Executive Committee ... consider system-wide impacts. Steps should be taken to ensure clearer direction and accountability for strategic results are communicated across ministries and that an overarching, comprehensive strategic plan for the justice system is developed and implemented....
>
> There is no clear accountability for justice system–wide results in one place as each branch has their own accountability "framework" resulting in fragmentation.[134]

Although the creation of the new Ministry of Justice now facilitates the development of a strategic plan for the criminal justice system with integrated performance targets, the Ministry Service Plan for 2012/13 to 2013/14 has not yet achieved this goal. The performance targets remain largely focused on individual branches.[135]

To obtain systemic change, it is necessary to set system-wide performance targets and then ensure that both monitoring and evaluation are rigorously carried out. Performance in relation to the targets needs to be discussed collectively and publicly.

In the course of the consultation process it quickly became apparent that there is both a recognized need and a desire for a more strategic and coordinated approach to criminal justice and public safety in British Columbia. I also held focused consultations with senior leaders within the Ministry to explore how best to respond to this expectation for improved performance.

In summary, a strategic and coordinated approach to delivering criminal justice and public safety will require understanding the criminal justice system as a system; developing a strategic vision; setting priorities and responding to trends; coordinating resources; basing decisions on comprehensive, accurate and transparent data; regular reporting on performance back to local offices, and even down to the individual level; and regularly evaluating and reporting to the public. Past experiences teach us that in order to succeed, a broad range of government and non-government participants (including the judiciary) should be included in developing a strategic plan. The strategy ought to involve systemic rather than incremental change. Close linkages to local and issue-specific expertise must be fostered, and reform initiatives must be reported on and evaluated from a systems-wide perspective.

7.2 CONSULTATIONS

The general themes in the consultations concerning overall planning and direction included the following:

- There is no overall plan for the criminal justice system;
- The criminal justice system is highly complex and includes many stakeholders, participants, service providers and an interested public;
- The institutional and constitutional independence of the investigative, prosecutorial, judicial and defence participants in the system make coordination and collaboration challenging;
- Different professional cultures reward and value behaviours differently;
- While there are a number of informal cross-sectoral committees and working groups, these are not central to the work of any participants, and despite a great deal of goodwill, their inability to overcome perennial silo thinking creates a general sense of frustration.

134 British Columbia Ministry of Finance, Internal Audit & Advisory Services, *Review of the Provincial Justice System in British Columbia* (September 2011), p. 2, online: British Columbia Ministry of Justice <www.ag.gov.bc.ca/public/JusticeSystemReview.pdf>.
135 British Columbia Ministry of Justice, *2012/13 – 2014/15 Service Plan* (February 2012), online: British Columbia Ministry of Finance, <http://www.bcbudget.gov.bc.ca/2012/sp/pdf/ministry/jag.pdf>.

A number of submissions and people in the course of consultations suggested that there was a need for an overall plan for the criminal justice system in British Columbia.[136] This was observed by members of the public, independent observers, expert consultants, police representatives and prosecutors. For example, the BC Civil Liberties Association noted:

> The Canadian criminal justice system is a complex machine, requiring the participation and co-operation of a vast array of actors, including the provincial government, the judiciary, the legal bar and the staff who administer its operations. In BC, that machine is showing signs of malfunction.[137]

Business people understand the need for an organization to have an overall plan. This was reflected in the submission made by the Vancouver Board of Trade that "virtually all organizations ... can derive benefit from identifying and pursuing a strong central vision." Doing so "creates a common focus for all involved" and "helps ensure operational transparency, accountability and that the individual parts and/or people in a system are contributing to a desired common end."[138]

The BCACP has recommended that a Provincial Crime Reduction Initiative be created, to commence in 2013, with province-wide goals, metrics and targets.[139] During consultations police officers expressed the hope that an overall plan would be put in place that would permit an alignment of goals in the public interest, without sacrificing necessary and important institutional independence.

A number of submissions commented on the need for better coordination and collaboration within the system. This was also identified as a need in the *Green Paper*.

Some of the suggestions for improvement imply the existence of an overall plan. Thus, for example, the suggestion that public goals for the reduction of crime be established and publicly reported across the province implies that system-wide information gathering and reporting exists alongside system-wide goals.

Two broad consultation tables were held to discuss what structures might be put in place to achieve better overall system planning and execution. One was a full-day session with all the senior ministry officials, the other a consultation table including input from the CBA, the Trial Lawyers Association, LSS and Ministry officials.

A number of people urged the creation of a central body that would have influence over the rational allocation of resources within the entire justice system. This would include non-governmental providers such as the John Howard Society and others who are crucial to providing community assistance to victims and offenders.

There are some who debated whether the criminal justice system should operate as a system at all. In this view, the aggregate effect of properly running components would achieve the ends of justice for British Columbians. The system participants cannot be members of a "team," for the obvious reason that they are independent and their roles are not lived out in concert with one another.

I have already stated my reasons for concluding that this approach is unlikely to result in a well-performing system of criminal justice. Any reform program, however, must recognize that a significant number of independent professionals operating within it will have to be persuaded that changing their approach is consistent with their service as professionals, and with the values they hold.

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136 While the Ministry Service Plan does state some broad goals, it does not reflect a system-wide plan in material respects.
137 British Columbia Civil Liberties Association, *Justice Denied: The causes of BC's criminal justice system crisis* (2012), at p. 9., online: British Columbia Civil Liberties Association <http://bccla.org/wp-content/uploads/2012/05/20120401-Justice-Denied-report1.pdf>.
138 Submission to the BC Justice Reform Initiative of the Vancouver Board of Trade, Wendy Lisogar-Cocchia (Chair) (12 June 2012), p. 2 [unpublished].
139 BC Association of Chiefs of Police, Resolution 21 June 2012. See: Schedule 7.

I would summarize the professional hesitancy I heard during consultations around systems thinking as follows:

- Systems thinking is bound to sacrifice individual interests to collective goals and purposes; and
- Systems thinking is inapplicable to those engaged in criminal law who are duty-bound to act independently in discharging their roles, and in many respects their duties legitimately run against a governmental desire to achieve social compliance and efficiency.

I also heard a variety of views about resources:

- As a core function of democratic government, a criminal justice system should receive whatever reasonable resources are needed to operate a fair and just system; and
- The aggregate costs of the system of justice are a product of factors beyond any reasonable control.

Efforts to achieve efficiency and cost reduction can at least potentially undetermine core justice values such as the presumption of innocence, the right of disclosure, the right to require the state to prove the case against an accused beyond reasonable doubt, and the right to a free and independent judiciary.

Similarly, most people trained as lawyers view workload as determined by the general level of crime in the community. Timeliness is a product of capacity within the system and the requirements of the standards of process, and very little can be done about these inputs other than working even harder than already expected, or achieving greater resources from treasury.

During the many consultations I held, no commonly held vision for the justice system emerged. It became apparent that many groups operate as if independent of each other. Without an overall strategy to guide and coordinate system participants, there was also no overarching approach to reconciling policy among the various groups to ensure that they always acted towards a common outcome.

One topic on which police had strong opinions was that priorities vary as between justice participants. At present, priorities are established within each institutional sector. Although there are efforts to communicate those priorities to other participants, it is generally acknowledged that there is little reconciliation of those priorities across the system.

As situations change and emerging demographic, ethnic, economic and other trends occur, priorities and needs within the system are expected to change. Therefore, the system must also be managed in a way that is dynamic and can respond to those changing priorities and needs. As the LSS notes, responsiveness will require justice system participants to communicate and work together as part of a "larger discussion...about the importance of an affordable, accessible justice system, and what it might look like in a changing society."[140]

The establishment of priorities must also, of course, be conducted in light of the priorities that emerge from the overall plan for the criminal justice system. Finally, prioritization of cases for disposition is itself a process that may require developing a common approach for responding to the forensic risk associated with certain cases—such as child witnesses and domestic violence cases—and system priorities for particular types of offences; for example, responses to an increase in home invasions. Despite the existence of some exceptions and stated policies, the general culture remains one of chronological priority and equality between cases. As one prosecutor observed: "Who is to say that the other charge is less important than this one?"

7.3 ANALYSIS AND RECOMMENDATIONS

7.3.1 Reconciling Criminal Justice Goals with Systems Thinking

Systems thinking and improvements based on business process models are met with resistance from justice professionals largely because they

140 Legal Services Society, "Making Justice Work : Improving Access and Outcomes for British Columbians," *Report to the Minister of Justice and Attorney General The Honourable Shirley Bond* (1 July 2012), [unpublished] at p.11.

are perceived as flowing strictly from cost-saving concerns. Most justice professionals entered the justice field because they thought they could serve the community by pursuing justice goals. But few have any background in management or administration. Reconciling the very different cultures of modern management and justice is a real challenge.

Another challenge is that even when both business managers and justice professionals are addressing processes, they speak in quite different languages. In various consultations it was reported that justice professionals were uncomfortable with assuming or exercising managerial authority, defining targets, developing strategies to achieve targets, engaging in discussions that required significant change, and accepting data that contradicted what people within the system considered true. It is also true that justice culture has a long history of valuing subject-matter expertise over measurement and testing.

Though adapting managerial insights to the justice setting is challenging, there are clear signs of progress, with a growing recognition that the business process approach does not seek to substitute business values for core justice system values. Rather it is a question of using insights into how processes can be fundamentally reformed in order to focus on those core values while eliminating unnecessary elements. So, during the course of this review, the Provincial Court independently retained a business process consulting firm to review its criminal process issues. Similarly, senior justice officials have been actively seeking to apply business process methodology to the Ministry on a priority basis.

7.3.1.1 Justice Goals

There is a growing recognition that systems thinking can assist in advancing justice goals apart from questions of costs and efficiencies. Lawyers in particular are coming to appreciate more fully the impact of systematic dysfunction on the justice values we cherish. A number of the proposals advanced to the review stem from a systems approach but are aimed at achieving justice goals rather than cost savings or efficiencies. These include:

- Systematic reforms to permit speedy and predictable trial dates;
- Proposals to change the priority for hearing cases from the largely chronological to establishing priorities based on the particulars of the case, including the impact of time on the evidence, the victim's needs, the type of witnesses and the characteristics of the offender;
- Seeking a new role for victims within the system through restorative justice approaches that become engaged when victims voluntarily seek to assist in the offender being accountable while at the same time having hope of restoration to the community;
- Early, principled resolutions, including increasing opportunities for diversion and alternative measures where appropriate; and
- Better engagement with the particular problems of the mentally ill and those addicted to substances, as well as other medical and social conditions that would benefit from special expertise.

I am satisfied that there is a growing appreciation for the processes of applying modern management techniques and systems thinking in the justice system, and that the challenge is now to consistently implement these approaches system-wide. I believe that they will, when consistently applied, accrue benefits to both the justice goals and the financial accountability of the system.

7.3.1.2 Achieving Outcomes

Police forces in British Columbia have for some time been aggressively seeking to reduce the incidence of crime through proactive policing strategies. That approach has been particularly successful with property crime and with the general level of crime committed by prolific offenders.

As already discussed, corrections policy has been very successfully using objective data and experience to identify the risks of re-offending and to reduce recidivism through various supports to offenders.

Youth justice is an area of notable success. Levels of youth crime declined by over 50% over the past

two decades.[141] This coincides with the federal *Young Offenders Act* in 1994, with its reframing of the approach to young offenders. Other significant impacts have been the transfer of responsibility of youth justice to the Ministry of Children and Family Development (MCFD) in 1995 and the increasing use of police diversion rather than relying on the formal justice system to respond to all criminal acts. Underlying this success story is the success of interventions in the lives of young offenders. Not only have these interventions improved public safety, they have also helped youth at risk lead crime-free lives.

As already noted, the IRP program is another recent initiative that has achieved dramatic improvements in improving outcomes. That program has

- Reduced driving fatalities by 40%;
- Improved police investigative efficiencies dramatically; and
- Reduced the overall level of drinking and driving in the province.

Taken together, these and other successes, support the following conclusions:

- Behaviour can be changed through proactive and modern programs.
- Offenders can be successfully helped to lead crime-free lives.
- Immediate sanctions are far more effective than delayed and unpredictable sanctions.
- Problem-solving benefits from informed expertise.

7.3.1.3 Reconciling Justice and Outcome Goals

Criminal law jurisprudence has always recognized the need for courts to have regard for broad social trends in the execution of their work, and in particular in determining fit and appropriate sentences. The sentencing part of the Criminal Code articulates the purpose of sentencing as being "to contribute … to respect for the law and to a just, peaceful and safe society."[142] This articulation of the purpose of the criminal law and sentencing makes it clear that we have to be concerned about both justice and safety goals.

7.3.1.4 Timeliness

Finally, in the course of the consultations all the prosecutors, defence lawyers and judges expressed frustration and a strong determination to change the culture that has already been discussed. Many commented on how much more professionally rewarding it was to be defence counsel or prosecutor or a judge when early and certain trial dates were the rule rather than the exception.

It was also recognized in the consultations that a strong case can be made that fundamental justice goals are imperilled by delay and complexity. In particular:

- Many of the very large criminal prosecutions over the past decade have at one time or another been at risk of collapse;
- Approximately 15% of cases set for trial are stayed on the first day of trial, and many of these stays are the product of delay making the case unprovable;
- Approximately 40% of the cases set for trial have a guilty plea entered on the first day of trial, with the result that the accused is not being held accountable during the interval and has been unable to access programs which might influence or help the underlying conditions contributing to his or her criminal behaviour; and
- Public confidence is undermined when victims and witnesses, including interested members of the community, have to participate or watch as many cases come to resolution far too slowly.

In short, the widely perceived conflict between justice and efficiency goals is not based in reason or sound analysis. The real experience of the system is that both must be pursued in order for each to be realised: they are, in practice, interdependent.

141 See discussion in Section 3.3 of this report.
142 *Criminal Code* RSC 1985, c C-46, s 178.

7.3.2 Factors Related to Success

Before turning to the mandate and related recommendations concerning the Council, it is worthwhile to summarize some of the elements that I believe are critical for success.

7.3.2.1 Collaboration and Coordination

There is an important difference between coordination and collaboration. Collaboration includes involving other sectors in the development and framing of one's own services and initiatives. It has been said that coordination without collaboration can easily become merely conversation. Most importantly, a system-wide approach will not be truly excellent unless it also includes collaboration around the establishment of goals, performance measures and other means to support the system's overall performance.

The degree of management that is both needed and appropriate on a system-wide basis is a difficult public administration question.

The recent merger of the two principal justice ministries into one Ministry of Justice with two deputy ministers introduces a new reality that should facilitate both coordination and collaboration. How this new ministry manages its relationship with stakeholders such as other ministries, municipally funded police forces and non-governmental organizations is an important topic deserving careful attention.

7.3.2.2 Expertise

The public expects professional expertise. Any new organization must encourage taking advantage of the increase in legal specialization of the last 30 years. Using expert and specialized prosecutors, judges and defence counsel is an important consideration in any future plan aimed at achieving better outcomes.

7.3.2.3 Institutional Reform

As noted, we already have several highly expert and well-developed institutions. Reforms to align their planning, priorities, management and cultures must be complementary to the goals of the overall justice system and must accompany any general reform. The recommendations for some complementary institutional reforms are discussed and set out below.

7.3.2.4 Comprehensive, Accurate and Transparent Use of Data

In order to properly assess trends, set priorities and allocate resources in a strategic and coordinated manner, management decisions for the justice system must be evidence-based. Managers of the system, as well as participants, need to have a solid foundation of factual knowledge to inform their decisions—moving beyond reliance on anecdotal or subjective observation. The data must be comprehensive, objective and accurate. The data must also be accessible to those both inside and outside the system, and it should be presented in an impartial manner.

In British Columbia, the collection of criminal justice system data is in fairly good shape. The Court Services Branch has developed a number of performance measures, such as court results, timelines and revenue targets on which it collects data.[143] The *Green Paper* similarly notes that "significant information has already been made available regarding the work of the courts" and pledges the further release of "substantial amounts of new justice system data" into 2013.[144] The Ministry has also made available to the review considerable information concerning criminal justice system trends (available at http://www.bcjusticereform.ca).

However, there is still much room for improving the way in which data is collected, presented and shared across our criminal justice system. As Yvon Dandurand notes, Canada, like England and other countries, may collect a great deal of performance information. However, most of it focuses on the performance of individual agencies, and not of

143 British Columbia Ministry of Finance, Internal Audit & Advisory Services *Review of the Provincial Justice System in British Columbia* (September 2011), at p. 23, online: British Columbia Ministry of Justice <www.ag.gov.bc.ca/public/JusticeSystemReview.pdf>.
144 British Columbia Ministry of Justice and Attorney General, *Modernizing British Columbia's Justice System: Green Paper* (February 2012), at p. 18, online: Ministry of Justice <www.ag.gov.bc.ca/public/JusticeSystemReviewGreenPaper.pdf>.

the system as a whole.[145] While data on individual agencies is useful, it may not be sufficient to inform system-wide strategic planning and coordination.

Some justice system participants are suspicious of data presented by others. In consultations, submissions and statements made to the media during this review, there were often disagreements as to what the data showed regarding important aspects of the criminal justice system. Internally generated statistics were disregarded by some as partial, and in many cases not all participants had the same access to data. Without agreement on the basic information required to make management decisions or to assess proposals for change, it is not surprising that existing decisions are criticized and initiatives fail to succeed.

A strategic and coordinated approach to the criminal justice system can only succeed if it proceeds on the basis of comprehensive, accurate and transparent data that is accepted as impartial by all participants to the system. The culture needs to be one where information about the performance of the system is routinely provided to staff and stakeholders, and the questioning and discussion of the data is encouraged. This will not only facilitate an understanding of the data but will ultimately bring operational improvements. There should also be a forum that facilitates coordinated data collection, and discussions on the evaluation of the less tangible performance measures that do not readily lend themselves to statistical presentation.

7.3.3 Criminal Justice and Public Safety Council

From the review of similar and previous initiatives seeking system-wide influence, I would draw the following conclusions:

- A body needs to be responsible for establishing an overall plan, obtaining resources for that plan, monitoring and reporting on progress to the public, and managing the efforts between justice participants and non-governmental organizations.
- This organization must be a part of the Ministry and the central body through which senior Ministry leadership carry out their work.
- To be effective, this body must have strong influence over the resources which flow to justice participants, and it must be able to reallocate resources that are added to the system, or which are made available through savings resulting from efficiencies or improvements in productivity.
- The organization needs to have an ongoing institutional life and an external profile such that the public understands there is a governmental body responsible for providing continuity, planning and accountability.
- To be effective, the organization must have effective and collaborative relationships with those parts of the system which lie outside the executive branch of government, chiefly the courts and non-governmental organizations.

In the pages that follow, I set out what the Council might look like, how it would operate and what topics it might focus on.

7.3.4 Membership

Initially I considered recommending a council with membership beyond the Ministry of Justice, including other key stakeholders such as the judiciary, police, LSS and the Bar, as well as members of the public and the academic community. In the end, however, I am of the view that the Council must remain within government. It must be the central body through which senior ministry leadership carry out their work, that is, the Ministry Executive Committee.

In reaching this decision I concluded that it would not be sufficient to create an advisory body to government, no matter how influential such a body might be. At the heart of this challenge is the need to take a different approach to the management of the criminal justice system, one where the requirements of the system take priority

145 Yvon Dandurand, *Addressing Inefficiencies in the Criminal Justice Process: A Preliminary Review* (June 2009), at p. 44, online: International Centre for Criminal Law Reform and Criminal Justice Policy <www.icclr.law.ubc.ca/files/2009/InefficienciesPreliminaryReport.pdf>.

over the interests of the individual sectors. I was also influenced by the need for this body to have budget responsibility in order to direct resources to areas of strategic priority for the system.

I have therefore concluded that the Justice Reform Council should be reformed and given an expanded mandate, role and profile. The new Council, which I call the Criminal Justice and Public Safety Council, should consist of the two Deputy Ministers and all of the ADMs with responsibility for the criminal justice system, as is currently the case for the Justice Reform Council, which includes the person responsible for youth justice in MCFD. However, this structure is not only to be responsible for justice system reform; it will also be responsible for the management of the entire criminal justice system (or the parts of it within the purview of the provincial government) through system-level strategic planning and coordination.

I am aware that this may be seen as a continuation of an existing approach that has not proven successful, and is thus itself not likely to succeed. Nonetheless, if the thoughtful leaders in the Ministry turn their minds to creating a structure which requires coordination and a systemic approach, and create disincentives for operating in silos, they will be able to move to a fully integrated approach to management.

Without prejudging the strategies that might be found helpful, changes to budget policies that enforce a strategic approach to the implementation of strategic objectives, as well as job descriptions and performance agreements that prioritize systemic goals over operational goals, might all prove helpful.

This proposal will require effective collaboration and commitment from all participants in the justice system. Groups must be willing to communicate with each other and to overcome institutional isolation that currently exists. Change will not come easily, but in my view such a systemic approach is necessary to support transformative change.

The prosecution will of course need continued respect for decisions made within their core discretion.[146] However, if an overall plan is going to be developed by the Council, a more flexible and less distant relationship needs to be developed.

7.3.5 Relationship With the Judiciary

In my view it would not be appropriate to have the judiciary as members of the Council, because it should have management and budget responsibility for the justice system. However, their active involvement is critical to effective and coordinated reform of the justice system. Later, in Section 7.3.14 I recommend the statutory establishment of a formal Justice Summit to bring together justice participants, including the Chief Justices, Chief Judge and the senior executive of the Ministry of Justice. In my view this Summit will be a vital part of effective reform and should be prepared to meet on a frequent basis to ensure collaboration among justice participants.

7.3.6 Overall Mandate – the Development of a Criminal Justice and Public Safety Plan

The Council's overarching mandate would be to establish, oversee and report on a Criminal Justice and Public Safety Plan for the Province of British Columbia. In order to carry out this mandate, Council will have to bring together all the necessary inputs for a province-wide plan, establish the means by which execution by the institutions responsible for direct operations can be reviewed, and apply and report on performance measures appropriate to the system as a whole.

In my view this objective has three subcomponents: articulating a strategic vision for the criminal justice system; establishing a systems-level plan to implement that vision; and measuring the performance of the justice system (including new initiatives) while reporting on those measures to the public.

146 See: M. Joyce DeWitt-Van Oosten, then Deputy Director, Prosecution Support, Criminal Appeals and Special Prosecutions, Criminal Justice Branch British Columbia, "Balancing Independence with Accountability: A Legal Framework for the exercise of Prosecutorial Discretion in British Columbia (Revised and Updated July 2011) [unpublished].

Transformative change requires systems-level thinking and not simply incremental change effected within the separate institutions of the justice system. As discussed earlier in this report, experience tells us that institutions implementing initiatives on their own simply have not been successful in bringing change to the justice system as a whole. In his report on inefficiencies in the criminal justice system, Yvon Dandurand notes:

> Few of the efficiency improvement initiatives considered so far seem to have had a sustained impact on the system. This seems to have led many to conclude that the only truly successful initiatives to improve efficiency of the criminal justice process will be those which adopt a comprehensive and integrated approach to performance enhancement.[147]

An overarching vision is needed for the justice system, and it must be a vision to which participants and senior managers within government can subscribe. In this regard, what was particularly encouraging during the course of consultations is that it is not only participants who thirst for meaningful and systemic changes to the system. The provincial government appears to also be willing to consider systemic change. In fact, the *Green Paper* states that my review should "not be designed to deliver short term answers on how to fix immediate challenges in the system," but should rather "be focused on what structural or institutional changes should be made to enable the system to work together and make improvements, in ways that are constitutionally appropriate."[148]

In my view, the Council should be tasked with establishing the plan for the justice system. To have credibility, this strategic plan must be seen as the product of a process that has included consultation throughout the sector, with the judiciary and all the key stakeholders. It must align performance measures with goals that professionals within the system embrace as important to both justice and effectiveness, and it must assure the public that it will report both where it succeeds and where it falls short.

7.3.7 Establishing a Province-Wide Implementation Plan

The second objective of the Council would be to establish a systems-level implementation plan based on broad input from justice system participants. Such an implementation plan would be directed at achieving the overall vision for the justice system. Establishing an implementation plan will require tackling several issues, including

- Focusing on meaningful outcomes rather than processes;
- Building on participants' understanding of the interrelationships they have with each other to better recognize the justice system as a system and to coordinate their efforts;
- Establishing long-term linkages for communication and information sharing among participants;
- Identifying resources that can be shared among participants to maximize value;
- Clarifying the responsibilities and expectations of each justice system participant group regarding implementation at the local or institutional levels;
- Building and analysing the data necessary to support solid decision-making; and
- Identifying short-term and long-term goals and performance measures to be used in evaluating the justice system.

7.3.8 Timeliness

I have talked earlier about the critical role of timeliness in a well-functioning justice system. A comprehensive view of the justice system must

147 Yvon Dandurand, *Addressing Inefficiencies in the Criminal Justice Process: A Preliminary Review* (June 2009), at p. 46, online: International Centre for Criminal Law Reform and Criminal Justice Policy <www.icclr.law.ubc.ca/files/2009/InefficienciesPreliminaryReport.pdf>.
148 British Columbia Minister of Justice and Attorney General, *Modernizing British Columbia's Justice System: Green Paper* (February 2012), at p. 20, online: British Columbia Ministry of Justice <www.ag.gov.bc.ca/public/JusticeSystemReviewGreenPaper.pdf>.

start with the criminal event. At that time the victim will begin to form his or her expectations of the system. It is from that date that victims consider the system to have taken over the investigation and management of the case.

This is also the first opportunity for reported events to be directed away from the criminal system. While a sound system will encourage the principled early diversion of cases, it should also monitor what is not being included within the system.

A systematic approach to the criminal justice system requires looking at the question of timeliness from an overall perspective. That is the perspective of a victim and the community, and is what matters to them as well as to offenders. Indeed, the maxim "justice delayed is justice denied" does not discriminate between delays at different stages. So timeliness must be measured from the time of the complaint or the report until the matter is resolved, whether through diversion, guilty plea, stay, conviction or appeal.

Making ourselves accountable for timeliness from the outset (the reporting of a potentially criminal event) raises a number of challenges: What are the right performance measures for different cohorts of cases? How should the results be gathered and reported? And how can the participants work together to minimise overall delays? Indeed, the existence of delay in one part of the system may be cause for a subsequent process to grant priority to enhance overall timeliness. It is important that the definitions of what is being measured align with the performance that is being pursued.

Despite these challenges, changing the way we view timeliness is a good place to start in re-framing the system and encouraging system-wide performance and excellence.

7.3.9 Evaluating and Reporting on Justice System Performance

As previous attempts to reform the justice system have shown, meaningful progress rarely occurs without regular monitoring and evaluation of reform initiatives. As noted by Yvon Dandurand:

> .... most attempts to influence the behaviour of the participants [in the criminal justice system] and to introduce procedural refinements and to increase the performance of the system are going to be largely futile, unless they are accompanied by an ability to monitor the performance of the system and its many components and assess the impact of reforms.[149]

The key to Mr. Dandurand's observations is that there must be some ability to monitor the performance "of the system and its many components." That is, when implementing system level changes, it is not sufficient to monitor the progress made by initiatives within individual institutions. System-level evaluation is critical and should be conducted routinely. In order to ensure the success of ongoing reform initiatives, evaluation results must be examined in light of their contribution to the desired outcomes of the justice system as a whole.

An equally important task is the public reporting of system-level evaluations of the justice system and ongoing reform initiatives. Rarely are projects initiated in perfect form from the outset. Evaluations fed back to justice system participants are necessary to allow for responsiveness and improvements to ongoing initiatives, and to better ensure that they achieve desired outcomes.

An important role of the Council would therefore be to oversee the evaluation of justice system performance (including the performance of reform initiatives) and to report its evaluations to participants and the public. Not only would open and transparent evaluations and reporting assist in building a common understanding of justice system goals, it would also improve the public's

149 Yvon Dandurand, *Addressing Inefficiencies in the Criminal Justice Process: A Preliminary Review* (June 2009), at p. 46, online: International Centre for Criminal Law Reform and Criminal Justice Policy <www.icclr.law.ubc.ca/files/2009/InefficienciesPreliminaryReport.pdf>.

confidence that needs in the justice system are indeed being addressed.

7.3.10 Performance Measures and Judicial Independence

I have proposed system-wide performance measures be established, made public, and reported on. Establishing and reporting on carefully considered expectations of the times we expect criminal matters to be resolved is a critical matter of public confidence for all elements of the justice system.

A system-wide timeliness measure, such as the time from report to resolution, takes into consideration the contributions of all participants in the justice system: police and prosecution during the investigative stages, counsel during the pre-trial and trial stages, and judges during pre-trial and trial stages and while completing reserved judgements.

The measurement of a case from offence to resolution will necessarily include phases in a case's progression which are subject to judicial control. As such, applying the performance measure of offence-to-resolution raises the consideration of whether this proposal impacts judicial independence. Any reforms around timeliness must respect the principle that judges must remain free "to render decisions based solely on the requirements of law and justice." [150]

The proposal for system-wide performance measures has different aspects that need separate consideration. The proposal that there be greater transparency around the times that cases take to resolve is a question of transparency and not performance. Similarly, overall system performance measures for resolution of categories of cases do not imply criticism of the treatment of any particular case or the work of any individual judge. Performance measures by other justice participants such as the prosecution service for work performed by them in the court system is also something that does not give rise to judicial independence concerns.

I have recommended that all the justice participants have consistent performance measures related to timeliness, and that recommendation is intended for the courts as well. I am confident that the courts can develop performance measures that are consistent with a system-wide effort to achieve timeliness, without intruding on institutional or individual judicial independence. I agree that the format of any performance measure settled on by the courts needs to be free of any potential to influence or condition the exercise of judgment according to law.

I understand that the courts have concerns about this recommendation. One concern is that the time required for a particular case—in particular, the time required to deliver a reserved judgment—varies from case to case and judge to judge. Another concern is that British Columbia's courts already deliver timely justice in the majority of cases and it is only exceptional that criminal cases take too long. Concerns have been expressed that performance measures treat the delivery of justice too much like an assembly line. There is also a concern that in difficult cases of substantial complexity, such as those in the Supreme Court and the Court of Appeal, the public may not readily understand the amount of time required to reach resolution, and may therefore have less confidence in the system than they might otherwise have.

In general I believe that the public will have greater confidence in a system that has greater transparency, and that they will understand that there are legitimate differences between cases and that no single rule can be settled that would be just or appropriate in every case. The public will accept there are exceptional cases. I also think that if the public was assured, through transparent standards, that timeliness is one of the goals of everybody, including the judiciary, and that these standards are fair and appropriate, it would have greater confidence in the system.

I note that there are already statutory requirements here and elsewhere for the conduct of certain

150 *Mackin v. New Brunswick (Minister of Finance),* [2002] 1 SCR 405, at para 37.

hearings within stipulated timelines, and in Ontario and Quebec there are statutory requirements for the delivery of judgment in reserved cases within a stipulated time.[151] The United Kingdom apparently already assesses judicial performance by reference to the time from offence to sentence.

It is my recommendation that the courts themselves develop and make available reports on timeliness; for that purpose I need only be satisfied that performance measures are possible, not what performance measures should be settled on. There are a number of ways those measures could be stated—for example, the recognition that not all cases are alike could be addressed by different timelines for different types of cases.

Massachusetts offers an example of a judicially led development of standard time frames for the disposition of every type of case in trial courts. To account for the individuality of cases, a series of time frames were developed to take into account case types and complexity, creating "objective benchmarks for determining whether cases move along in a timely manner."[152] According to the Massachusetts Supreme Judicial Court Report, "time standards allow court leaders to study case flow management techniques to enable the disposition of cases within the standards" and the analysis of factors such as staffing, courtroom space and support "identifies ways to eliminate delays and ensure that scheduled court events actually move forward." [153]

I do not agree that performance measures reduce the justice system to an assembly line. I also do not agree that general performance measures are made impossible by the differences between cases. These concerns need to be addressed in the development of particular measures and in provision for exceptional cases. I do, however, encourage the development of ambitious measures that seek excellence in timeliness and that are understandable to the public as well as consistent with the overall goals set for the system.

To be clear, this recommendation is not intended to address the internal management of the courts or how individual judges may need assistance in meeting measures set by their court as a whole. The recommendation is founded on three conclusions: that the public would benefit from greater transparency regarding timeliness in criminal cases; that the public needs assurance the system as a whole will perform to modern expectations of performance; and that it has a legitimate expectation that all justice participants, including the courts, will contribute appropriately to achieving these goals.

7.3.11 Institutional Life

The Council should have a distinctive institutional life and profile. Senior leadership within the Ministry should regard their participation in the Council as critical to the execution of their jobs.

To support the Council in carrying out its mandate, I suggest that there needs to be a body, such as a secretariat, created to support the Council, to carry out consultations with stakeholders, develop a draft criminal justice and safety plan, develop key performance measures, and ensure that data is gathered to monitor and evaluate the implementation of the plan.

A challenge will be to ensure that the views of key stakeholders are fully reflected in any plan and endorsed by the leaders of all of the sectors. One approach would be to staff a secretariat by seconding in staff from the various branches as well as others with particular expertise. However, I am advised that this approach can lead to the secretariat being isolated from the operational priorities of the various branches, and this may result in a lack of acceptance of their recommendations at the executive level.

There are at least two models within the Ministry of inter-branch work which seem to hold promise and might be considered as models for supporting the

151 Quebec *Code of Civil Procedure*, RSQ c C-25, s. 465; Ontario *Courts of Justice Act*, RSO 1990, c. 42, ss. 95(2) and 123 (5).
152 Massachusetts Supreme Judicial Court, "Striving for Excellence in Judicial Administration," 2002, at p. 5.
153 Massachusetts Supreme Judicial Court, "Striving for Excellence in Judicial Administration," 2002, at p. 5.

Council. The first is the working group leading the new ICON II project, a system that will in a variety of ways improve the functioning of the justice system. The ICON II project, led by the Corrections Branch, has representation from stakeholders within the Ministry and within government who are on the steering committee and in the project work groups, and who remain in their branches. The members of that working group have worked collectively over more than a decade to promote the development of innovative technology and improve criminal justice processes and public safety, with the full support of their branches.

The other model was the Criminal Justice Reform Secretariat. Although a distinct organization, it was staffed with senior staff who were not seconded away from their branches, but who remained as members of their respective branches while working on agreed reform priorities. I understand that this arrangement worked well, keeping the senior management of the branches connected to, and supportive of, the reform initiatives. It also assisted with the implementation of the initiatives on the ground.

Some other means for enhancing effectiveness of the secretariat would include

- Making good use of business intelligence and the analysis of justice data;
- Locating criminal policy and reform expertise within the secretariat; and
- Ensuring that the secretariat has strong and senior leadership, with representation on the Council.

Questions of public administration tend to attract broad and legitimate disagreement. I have little direct experience or expertise in the area, but I can confidently say that the lessons from the experience we have already referred to support the proposals I have made. It will be critical for the Council to consult broadly with the stakeholders in developing the key performance measures and to have ongoing discussions around managing to achieve those objectives. This will include other ministries and authorities, such as health authorities, which are particularly important given the large role mental illness and substance abuse plays in certain criminal behaviours.[154]

7.3.12 Non-Governmental Organizations

There is a widespread view among non-governmental organizations that the financial discipline required by the current world economic troubles have fallen unevenly on the budgets of organizations outside government.

Put simply, the criminal justice system includes more than the Ministry of Justice. Any systemic analysis must include non-governmental participants. A full and rational plan for the justice system, in order for it to achieve its identified goals, must include providing sufficient resources for community-based resources.

7.3.13 Resource Allocation

One of the principal reasons that I have not recommended that non-governmental representatives be placed on the Council is the need, in my view, for a coherent and principled voice on the subject of system-wide resources.

In my view the system needs to put a priority on demonstrating to the central agencies of government that it is utilizing its existing resources fully—that it is performing in a way that is expert, properly managed, and producing outcomes that serve the ultimate public interests in justice and safety. Further, advances in managerial skill and a track record of success will reassure central agencies that investments made in the justice sector will be well-managed and deliver promised results.

I am confident that once this happens, any required resources will be found to fund the system as a whole. Justice is a central and high-profile aspect of government, along with the social licence to operate it, and it should command both respect and necessary resources.

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154 For further information, see: Inspector Scott Thompson, Vancouver Police Department, *Policing Vancouver's Mentally Ill: The Disturbing Truth* (September 2010), online: Vancouver Police Department <http://vancouver.ca/police/assets/pdf/reports-policies/vpd-lost-in-transition-part-2-draft.pdf>.

7.3.14 Recommendations

Recommendation: A Criminal Justice and Public Safety Council should be established within the Ministry of Justice and Attorney General.

Recommendation: The Criminal Justice and Public Safety Council should include the senior leaders of the Ministry, assisted by a secretariat.

Recommendation: The Criminal Justice and Public Safety Council should have responsibility for overall management of the criminal justice system, including preparing, under the direction of the Minister and in consultation with other justice participants, a Criminal Justice and Public Safety Plan for the province. The plan should also include

- A recognition that all of the criminal justice sectors have responsibility for achieving the overall goals of the justice system of both public safety and justice;
- A recognition that timeliness is fundamental to both public safety and justice;
- System-wide performance measures for timeliness based on the interval from the reporting of a complaint until its resolution. Each sector in addition will need to frame targets within this overall framework; and
- The development of performance measures for the justice system as a whole.

Recommendation: The Criminal Justice and Public Safety Council should also have responsibility for

- Oversight of multi-sectoral initiatives; and
- Public reporting on criminal justice data and progress reports.

Recommendation: A Justice Summit including all levels of court and justice system leaders should be created by statute as a means to facilitate collaboration among all justice participants, to consider progress in the process of reform, and to discuss changes in direction or new initiatives.

7.3.14.1 Secretariat

Recommendation: The Criminal Justice and Public Safety Council should be supported by a secretariat to assist in the development of the Criminal Justice and Public Safety Plan, as well as the development of appropriate performance measures and generally carrying out directions of the Criminal Justice and Public Safety Council.

Recommendation: The secretariat should include responsibility for criminal justice policy as well as project management expertise to improve the rigour with which projects endorsed by the Criminal Justice and Public Safety Council are implemented.

Recommendation: The secretariat should have an advisory board with independent academic or outside expert representation, as well as police, victim and broader public representation.

8. THE ROLE OF DATA AND TRANSPARENCY

The province has sustained an ongoing investment in the modernization of records management systems over the last decade. As result, British Columbia enjoys a more unified and common technological and data environment than most other comparable jurisdictions.

From our consultations, the priorities include

- The most effective use of the existing system;
- The cultural changes necessary to bring about an improved approach to data acquisition and management; and
- Changes required to encourage development of an accepted database from which the public may become better informed and which forms a sound foundation for public discourse and policy development.

There is substantial justification for hope in the achievement of improved system performance in the technology platform that has been built over several years. This offers a basis for sound and informed management decisions and accurate reporting of results.

8.1 FACTUAL CONTEXT

There are in place at least four major systems for the tracking of information, criminal events, justice processes and outcomes in British Columbia.

8.1.1 JUSTIN

JUSTIN forms the backbone of the court process. It records (among other things) police reports to Crown and police scheduling, charges, Crown victim and witness notification, court cases and scheduling, individual appearances, document production, the duration of particular events, information on accused persons and the output from the system in the form of guilty pleas, verdicts and stay of proceedings.[155] It does not record the outcome of criminal justice process in that it does not connect ultimately to the outcome of the process for victims or offenders beyond recording the disposition.

The benefits of JUSTIN are described by the Ministry of Justice as enhanced public safety, victim support, enhanced scheduling for law enforcement, and timely, accurate and quality information.[156]

While there is some limited public access to JUSTIN for basic court case–related information, access is primarily restricted to specific organizations and agencies which demonstrate an operational need and satisfy the established criteria.[157]

8.1.2 CORNET

CORNET performs a similar function to JUSTIN within the mandate of the Corrections Branch. Introduced first as CARE in 1982, then amalgamated with the Prison Records System as PRS in CORNET in the early 1990s, and finally upgraded in February 2005, CORNET 2 focuses upon the people within the mandate of Corrections and thus records the status of all pre-trial and sentenced offenders supervised in jail or by probation officers, including a broad range of data fields such as sentencing details, bail status, location, release conditions and risk assessments. The integration of CORNET and JUSTIN links information on offenders with information on court process.[158]

155 Further information about JUSTIN can be accessed at <http://www.ag.gov.bc.ca/justin/>.
156 *Benefits of JUSTIN*, online: British Columbia Ministry of Justice <http://www.ag.gov.bc.ca/justin/benefits.htm>.
157 *Requesting Access to JUSTIN*, online: British Columbia Ministry of Justice <http://www.ag.gov.bc.ca/justin/request-access.htm>.
158 Office of the Auditor General of British Columbia, *Managing Access to the Corrections Case Management System* (March 2008), at p. 17, online: Office of the Auditor General of British Columbia <http://www.bcauditor.com/files/publications/2008/report8/report/managing-access-corrections-case-management-system.pdf>.

8.1.3 PRIME

Police Records Information Management Environment (PRIME) is the core of the records system for all British Columbia police agencies. PRIME's basic focus is not on processes or people, but on criminal incidents. British Columbia enjoys the benefit of having one record system for all police agencies and thus has made substantial progress in overcoming the operational limitations and gaps of multiple police data systems. PRIME records founded instances of crime reported to police, information on suspects, victims, locations, times and persons of interest, and includes categories of offence. This information may well be supplemented by CAD (computer aided dispatch) systems, which record police responses to calls for service by type, duration and range of other variables.

8.1.4 CMS

Case Management System (CMS) is a system maintained by LSS. It records legal aid data such as requests for legal aid, referrals to lawyers and costs by tariff category. It permits the forecasting of demand for legal aid services based upon a multi-year averaging algorithm and has facilitated the matching of resources to services.

8.1.5 New Systems

Integrated Corrections Operations Network (ICON) was introduced in 2007 as a new project to provide business intelligence analytic reporting. It was developed by Corrections but has provided the broader justice sector with the ability to develop better business intelligence.

Phase II of ICON will enable "persons awaiting trial in custody to have reasonable access to their confidential electronic evidence (eDisclosure). Additionally, it will provide both custody and community offenders with access to aspects of their personal data. When complete, [it] will ensure the confidentiality of sensitive legal information, protect the rights of accused persons in custody, and streamline internal processes."[159] It is intended that ICON will ultimately be made available to other justice participants and, in particular, the Court Services Branch for court process analysis and potentially other justice participants.

8.1.5.1 Business Intelligence

An enhanced ability to use the data from the case management systems for business intelligence purposes is growing. Business intelligence analysis is intended to better inform decision-making through well-thought-out data analysis. It is fair to say that the ability to analyze and assess patterns within justice data is in its early stages of development. Similarly, linking the aggregate patterns between the major data repositories is still in its early stages. However, the recent creation of a business intelligence group within the Ministry of Justice, and a director of business intelligence, is an important step towards institutionalizing the role of business intelligence in the criminal justice system.

8.1.5.2 Business Process Re-engineering

Business process system analysis is generally aimed at eliminating unnecessary or unhelpful processes and realigning resources, the better to meet both demand and reasonable approaches to operations.

As discussed elsewhere, the province has mandated the application of business process system analysis across provincial government services. In the course of consultations, I met and reviewed similar projects, offered by Deloitte LLP and KPMG LLP, which have been successfully implemented in various justice settings.

The application of business process thinking to eliminate unnecessary or unhelpful processes has to date been used by the Provincial Court to review its process and scheduling system, and it offers great promise there and elsewhere.

159 British Columbia Ministry of Justice, *2012/13 – 2014/15 Service Plan* (February 2012), at p. 28, online: British Columbia Ministry of Finance <www.bcbudget.gov.bc.ca/2012/sp/pdf/ministry/jag.pdf>.

I further understand that some municipal police forces, in order to achieve greater efficiency and effectiveness, have received the authority to retain business process system advisors to analyze their processes.

8.2 POLICY CONTEXT

The principal challenges remaining for the best use of the new information and business systems in place are cultural and organizational.

There is a general cultural resistance to the use of these approaches—particularly those aspects peopled and managed by lawyers. The cultural preference for the anecdotal views of working professionals over data, the tendency of professional and institutional independence to isolate decision-makers, and the general suspicion attached to information distributed respecting governmental operations are all added to the general challenges of measuring the right things, being open to contradiction, and being open to innovation.

8.2.1 Cultural Resistance

It is commonly observed that legal systems are resistant to the acquisition and use of data. In no small part, this is due to the professional pride lawyers take in treating each individual case on its own merits. This tension between the generality required of categorization and the needs of the justice system to treat individuals on the merits of their own cases represents a challenging environment for these emerging systems.

We need to acknowledge the natural tendency of lawyers to be distrustful of management, sceptical of systems information and reluctant to accept goals which would impact decision-making. The means must be found to persuade the culture of the right place for these new approaches within a justice system.

One important value that needs to be better reflected within the system is the importance of transparency.

Within the Ministry of Justice, the distribution of business intelligence about core operations and key performance metrics to local offices as well as management is not standard practice, except within the Corrections Branch, which has been using business intelligence as part of its performance management approach since 2000.

The Corrections experience with the introduction of the regular distribution of management information was that initially staff were suspicious of the data, particularly where there were unfavourable comparisons to be drawn between offices. However, over time, the transparency of the data led to improvements in the entering of data at the office level, since there were public consequences to improper data entry, while the questioning and discussion of the data led to improvements in analysis and presentation of the data as well as greater understanding of the data. These reactions ultimately led to improved performance due to the feedback to individual offices about their performance in relation to standards and the performance of other offices.

It is not routine in other parts of the Ministry to provide significant business intelligence to local offices, nor is information regularly made publicly available in an accessible form.

The Ministry has recently made a principled and significant step in the direction of providing information first through the DataBC site, and now on the Ministry website.

Like all new attempts there will be an element of learning. From the experience of the review with its website and blog, I would offer the observation that what is important is not only what people want to communicate, but also what information people are interested in. Government websites appear most occupied with the former, but they are not as informed by the latter.

It must also be said that the public generally, not just lawyers, are understandably sceptical of government publications in any form that are purely restatements of policy and put facts in the public square to support that policy.

So, for example, the use of performance measures must be linked with accurate and regular reports of results: Ontario's JOT site is an excellent example in this regard.

8.2.2 AnecData

During consultations it was very encouraging that one thread of conversation concerned the frequent use in justice system decision-making of data that was in substance anecdote: AnecData. The common information system challenges of knowing whether what is being measured is the correct thing and whether the results can be trusted apply particularly when unexpected results conflict with the strongly held views of participants. All human beings approach the world with the hope and expectation that our views will be confirmed by our experience.[160] Most people experience contradiction as a rude and unpleasant surprise.[161]

One example of such a conflict is the strong belief that a big factor in the increasing workload in the justice system is the perceived increasing length of trials. There is no question that there are some trials which are extremely long, but certainly the data on cases in Provincial Court tells us that only between 1% and 2% of cases actually have a trial, and there are actually fewer trial appearances as a percentage of overall appearance in Provincial Court now than a decade ago.

There is substantial reason to be hopeful in respect of the tension between our own experience and system data. During consultations there were very few who rejected the potential insights offered by modern information technology or suggested that it should not be employed fully. Although there is a long history of scepticism around measurement in the legal world, it can be overcome by improving trust in the information and building on the goodwill and professional desire for excellence. That process will be advanced by regular reporting and openness about the results of the information.

8.2.3 Judicial Independence

Particular issues arise respecting the institutional independence of the court and the necessity for its consent to the release of information gathered respecting certain events within the courtroom. This is so even respecting facts that are lived out in the public arena.

Various protocols have been established to identify data that, though contained in JUSTIN and managed by the Court Services Branch, is designated as exclusively for the use of the judiciary, and which requires judicial approval before it can be accessed or disclosed.[162] Specifically, all judicial administrative information and all court record information is expressly within the control of the judiciary.[163] Such data includes

- Scheduling of judges, trials, hearings and ROTA information;
- Content of judicial training programs;
- Statistics of judicial activity;
- Court sitting time that is related to specific judges;
- A record of the Judicial Council of the Provincial Court; and
- Any case delay indices and/or data reports that have been developed by the judiciary.[164]

In practice, the judiciary ultimately approves and controls access to the courts module of JUSTIN (as that module contains court record information).

British Columbia is not alone in its restrictive approach to access to judicial data. I was told by Professor Anthony Doob at the University of Toronto that in order to get access to files of Ontario court data used by Statistics Canada to produce national court data (for example, their regular Juristat reports on courts), permission would have to be given by both the Ministry of the Attorney General and the

160 Daniel Kahneman, *Thinking, Fast and Slow* (New York: Farrar, Straus and Giroux, 2011).
161 Karl Popper's famous definition of science as the testing of falsifiable theories has little currency in legal systems. See Sir Karl Popper, *Conjectures and Refutations: The Growth of Scientific Knowledge* (London: Routledge & Kegal Paul, 1963).
162 *Protocol Agreement Between Court Services Branch, Ministry of Attorney General and Provincial Court Judiciary Related to the Confidentiality of Judicial Data* (March 1999); *Statistical Information Protocol Document* (29 October 2002).
163 *Statistical Information Protocol Document* (29 October 2002).
164 *Protocol Agreement Between Court Services Branch, Ministry of Attorney General and Provincial Court Judiciary Related to the Confidentiality of Judicial Data* (March 1999).

courts. But as far as he was aware, even these "case" files do not contain any information about the actual use of courtrooms (such as how many hours the court was in session). Indeed, in studying bail in Ontario, in order to find out how long courtrooms were used, why cases were adjourned to another day (rather than being held down until later in the day), who asked for an adjournment, and similar kinds of questions, one of Professor Doob's graduate students had to sit in on court hearings. In other words, on the most mundane "efficiency" questions of all—how many hours a week judges or justices of the peace are in court hearing cases—data did not seem to be available anywhere.

Similar frustrations have been expressed by other academics seeking to better understand criminal justice processes.

This problem becomes all the more daunting when the ultimate goal is improved outcomes for the community, the victim and the offender, since apart from disposition and ultimately recidivism rates in relation to offenders, very little information is gathered about outcomes for either.

8.3 CONSULTATIONS

It is fair to say that during the consultations there was general agreement on the need to improve the system's relationship with modern information and business systems. There was also general agreement on the need for greater and assured transparency in the statement of goals for the system and regular reporting of results.

During consultations the views of a large variety of people and organizations were obtained. Meetings were held with academics from the University of Victoria, Simon Fraser University, the University of the Fraser Valley and the University of Toronto. Meetings were held with business process experts from Deloitte LLP and KPMG LLP. A number of Ministry of Justice staff made themselves generously available and provided tremendous assistance in gathering data for the review. The Provincial Court made their data available on important questions.

LSS has urged the Ministry to develop more robust metrics to facilitate research on the interrelationship of the savings captured by withholding publicly funded legal services and the consequential costs to other justice and governmental services. It also urged the continuation of the modelling of justice system capacity with SFU's Complex Systems Modelling Group.[165]

The Representative for Children and Youth has very recently recommended that the Ministry produce an annual aggregate report on the outcomes of criminal prosecutions where a child has been a victim of violence, including cases that are stayed or otherwise terminated prior to trial.[166]

8.4 ANALYSIS AND RECOMMENDATIONS

It is clear that progress will not be made unless the analysis and inferences regarding system data are accepted within the criminal justice system and can be reported with credibility to the public. In a highly charged disputatious environment, there is a need for information which is gathered on a basis that is neutral to the interests of the participants and where disclosure is mandatory and regular, with a respected repository for the data and where its reporting is assured.

Part of the variability in information disclosure arises not only from the refining of inquiries over time and the development of research ideas, but also the need to ensure that all of the justice sectors understand and have no reservations about the data before its public release, as well as the natural desire to present information which supports the appearance of progress.

165 Legal Services Society, "Making Justice Work : Improving Access and Outcomes for British Columbians," *Report to the Minister of Justice and Attorney General The Honourable Shirley Bond* (1 July 2012), [unpublished].
166 Representative of Children and Youth, *The Impact of Criminal Justice Funding Decisions on Children in B.C. Special Report* (March 2012), online: Representative for Children and Youth <http://www.rcybc.ca/Images/PDFs/Reports/RCY%20Special%20Rpt%20Final%20.pdf>.

This is particularly true when the reporting of results is the province of those with managerial oversight of the project, program or department.

In order to overcome this shortcoming, some means must be found to provide discipline over the acquisition, management and regular publication of the results.

In my view the lack of regularity in publication of information related to performance is a major cause of the distrust of information about the justice system when it is released. Not only do people inside and outside of the Ministry wonder where the information comes from, they wonder why it wasn't released earlier and what other information might be available that might provide a different perspective.

The best way to create a greater understanding and acceptance of the data is to commit to regular reporting on key justice system data, and thus to facilitate ongoing discussion and questioning of the data. This discussion is vital for stakeholders and others to understand how the data is gathered and what it demonstrates, and at the same time, the discussion can also identify potential problems with the data itself, the analysis of the data or even the presentation of the data.

It has been suggested that to overcome the suspicion with which criminal justice system data is viewed, responsibility for the data needs to be given to a credible external third party. While this idea holds some attraction, in my view it cannot achieve the desired result. The information which underpins business intelligence comes from the actual operations of the system. It is then translated into a form that is suitable for analysis and to support decision-making. However, the necessary ongoing questioning and discussion necessarily involves those who understand the business and how the data is collected, to inform an understanding of its strengths and limitations.

After careful consideration, I do not think that it is desirable or even possible to simply give over responsibility for data gathering, analysis and reporting to some body independent of the operation of the Ministry. That is not to say that there is no room for getting external expert advice on each of the above elements. But the end goal is to create ministry capacity for credible data management and regular reporting.

However, the collection and distribution of information relevant to corporate performance targets and policy development is critical. It ought to be considered an important branch responsibility along with the production of all information relevant to branch operations.

Recommendation: The Criminal Justice and Public Safety Council secretariat should be responsible for the acquisition, analysis and reporting of criminal justice data.

Recommendation: The secretariat should establish methods to systematically gather data respecting performance measures and other useful data which can be regularly reported on and featured as part of the Criminal Justice and Public Safety Council's annual report.

Recommendation: The Ministry should distribute key business intelligence information, related to both the strategic system goals as well as branch-specific goals, to local professionals and staff and encourage discussion and debate on the information.

9. CRIME PREVENTION AND INVESTIGATION

This section discusses crime prevention, reporting and investigation.

9.1 CONTEXT

Understanding and maintaining public confidence in the system is largely dependent on two factors: a full understanding of the public's views of potential criminal events and the public's priorities for investigation and response by way of diversion, enforcement or other measures. Providing timely, accessible and credible information to the public so that their expectations are as informed as possible is critical to narrowing the gap between expert and public perceptions of crime. Enhancing the relationship with the public requires that better means be found to both ascertain the views of the public and communicate the system's public interest strategies.

The policy context for criminal investigation is vast, and this Review was not created to include a comprehensive review of policing policy and practice. We focus here on the relationship between criminal investigation and the other participants in the system.

The risk of investigatory independence and prosecutorial independence undermining the functioning of the system (that is, police and prosecutors working independently and potentially at cross-purposes) was recognized some time ago; in part to address this risk the Crown-Police Liaison Committee was created in the mid-1990s. The importance of that relationship and the clear professional respect held by the participants support a focused approach to this area. As a result this Review focuses on the proposal for changes to the charge approval process and concerns over the lack of co-ordination and collaboration between the police and prosecutors.

9.2 CONSULTATIONS

There were a number of submissions from the public that were sceptical about the lowering levels of reported crime. The scepticism was based on perceptions that people were not reporting crime out of a sense that nothing could be done, or their concerns would not be respected, or their lives would be disturbed and possibly made less safe by the making of a complaint.

Most alarming were suggestions that the under-reporting of domestic violence has not declined and that people, out of a fear of the system, fail to report such violence—and as a result continue to suffer in silence. Women's and children's advocates strongly raised concerns that reported domestic violence events in particular must be taken seriously, because of the view that the first report is likely not the first event of abuse.[167] Similarly, concerns were expressed that sexual assault allegations were being deterred by the stresses that the justice system places on complainants.

Defence counsel raised the opposite concern—that there is now substantial over-reporting and that the accused (usually but not always men) faces an inflexible system that fails to distinguish between criminal abuse and less serious events in relationships. A concern was also raised that the current inflexible policy ties the hands of police and prosecutors and burdens the courts with cases that the complainants no longer wish pursued.

Entirely opposing views were offered for the high rates of stays of proceedings in these types

167 For example, See: reports by the Representative for Children and Youth, British Columbia. Available online: <http://www.rcybc.ca/content/publications/reports.asp>.

of cases. Women's advocates say that the system trivializes women's complaints and that they recant their complaints because, with the passage of time required for the commencement of trial, pressures on them continue to mount. Others say that complainants in many cases decide freely to remain or return to their partners and that the system in many cases is unhelpfully criminalizing arguments. This view reports that some women are afraid to seek help for troubled relationships out of fear that the system will criminalize the dispute and prevent them from managing the issue without ending the relationship. Another concern raised was the question of regional and cultural differences in under-reporting. In this respect concern was raised that in rural areas, distance and the intimacy of small communities might lead to under-reporting. In respect of First Nations communities, concern was expressed that distrust and misunderstanding of the system might lead to under-reporting.

The policing perspective on the general issues was received from both leadership and members throughout the province. A degree of frustration was expressed by some police officers towards the absence of a common strategy between police and prosecutors towards improving public safety. In my view this general frustration over lack of a shared strategy and goals has led to proposals that police officers be permitted to lay charges without obtaining the approval of prosecutors. In short, the thinking goes, if charges could be laid by police officers then they could at least have a better sense of control up to that point in the process, and they could then leave the resolution of the matters largely to other participants in the system.

The complex structure of policing in the province obviously raises challenges for the development of a coherent overall strategy that successfully incorporates local and regional priorities and concerns. With both municipal and provincial police forces in the province, local culture and priorities must play a dominant role.

The Review received a number of submissions that urged encouragement of the increasing use of community-based diversion throughout the province, including restorative justice programs. In the general sense diversion includes police-based diversion, both formal and informal, Crown-based diversion, and Court-based diversion attached to the sentencing process.

Two obvious challenges exist for expansion of these approaches. First is the challenge of obtaining referrals from police and prosecutors where there is inadequate understanding of the goals and disciplines relating, for example, to restorative justice. As expressed by the Abbotsford restorative justice and Advocacy Association (ARJAA), it is important that police officers understand that restorative justice only becomes possible when the victim makes an unforced voluntary agreement to participate and that the process is rigorous and effective in both achieving reconciliation and reducing the risk of reoffending in particular cases. As stated during consultations: "We are not the Hug a Thug Society." The Minister's Advisory Council on Aboriginal Women impressed on me that their belief is the criminal justice system remains resistant in general to the effectiveness of these programs in achieving reconciliation and in improving safety in communities. This is largely an educational and culture change project that is well underway and in my opinion needs to be encouraged to be successful. The second challenge is the differential resourcing of these programs. While I was urged by various community organizations that more could be done with existing resources, it is also true that the funding of these programs is very modest and overly depends on volunteers and municipal funding. The concern is that poorly resourced programs may not realize the full potential of these alternative approaches and will then fail to win over other participants to the usefulness of the programs.

A greater degree of province-wide training and quality control, as well as focused reporting and evaluation, is critical to the disciplined development of these approaches.

According to many submissions to the Review, applying restorative justice to more serious cases

represents its most promising future application. In cases involving serious assaults and even more serious criminal events, for example, restorative justice could produce results, not attainable through enforcement or other measures, for both victim and community. However, a broader application of restorative justice to more serious charges would require an even greater change of the culture of police and prosecutors and may well require significant policy development.

9.3 ANALYSIS AND RECOMMENDATIONS

It is important that any criminal justice policy for British Columbia include consideration of the question of under-reporting. Similarly, meeting the demands of the public for attention and solutions to their problems requires better means of receiving those concerns and informing people both of the goals being pursued and the information relevant to their particular concern.

The BCACP strongly urged the Review to recommend the development of a Provincial Safety Plan.[168] This seemingly straightforward recommendation clearly springs from a desire to assure the public that there are shared strategies across the province in relation to seeking public safety. There are many other advantages to the preparation and publication of such a plan: making best practices apparent and scalable across the province; seeking areas of joint co-operation that would drive cost savings and efficiencies; and facilitating greater inter-agency co-operation and collaboration around problems that go beyond the local jurisdiction.

Recommendation: A province-wide crime reduction plan should be developed under the direction of the BC Association of Chiefs of Police in collaboration with the Criminal Justice and Public Safety Council.

Domestic violence cases raise a number of issues in relation to different aspects of their treatment under the current system. They are discussed in more detail in Section 16, but for present purposes any review of domestic violence, in my opinion, requires a disciplined review of the facts including the question of under-reporting.

Finally, addressing the intake of cases into the system with the best possible framework has implications for public confidence, cost-effectiveness, community safety, victim engagement and positive outcomes for individuals likely to offend. The most effective time and place in the system to consider diversion is at the outset; it saves costs at the very beginning and is clearly the easiest point to achieve timely results. Furthermore, there has never been more evidence showing the potential for rehabilitative and other measures to affect criminal behaviour. Perhaps the best example is our experience with dramatically lowered levels of youth crime. Although diversion has a place throughout the system, it is here that the greatest progress can be made.

9.3.1 Need for More Disciplined Estimates of the Under-Reporting of Crime

The General Social Survey (GSS) is conducted by Statistics Canada every five years. Among a number of questions, the survey asks people whether they have been the victim of a criminal offence in the past year or the past five years, what kind of offence, whether they reported it and if not, why. The information can be analyzed by province and can be provided for the largest metropolitan areas in Canada but not for most municipalities.

In the consultations, police and others said that while the GSS is helpful, in order to properly understand crime trends we need victimization information on an annual basis. The information needs to be broken down by community as well as by province, to permit the development of effective and targeted crime reduction strategies.

168 See Schedule 7.

The GSS also provides information on the reasons people do not report. While there are clearly many situations that are so minor that there is no need to involve the criminal justice system, it is important to understand other reasons that people may not report offences. For example, while young people between ages 15 and 24 are 15 times more likely to have been the victims of a violent offence than people over 65, young people are significantly less likely to report offences than older people, with only 20% of young victims reporting a violent offence compared to almost half of victims aged 55 or more.[169] This may be an indication of a particular problem in public confidence which should be explored.

Recommendation: Statistics Canada should be asked to increase the frequency of the General Social Survey to better understand trends in self-reported victimization that are particular to British Columbia, and the survey provide information respecting regional and cultural concerns as well as particular offences.

9.3.2 Taking Cases Out of the Justice System – Police Diversion[170]

Although we know that there is a substantial amount of diversion, there is no information about what percentage of cases are diverted by police province-wide, or what people are diverted to. Substantially increased levels of referrals occur when there is confidence the diversion will work, especially if the confidence is based on having experienced positive results through effective working relationships. Understandably this seems to have happened more regularly in smaller communities.

restorative justice advocates also urged the growth of these programs through enhanced education and improved relationships between investigators and providers.

Recommendation: A province-wide plan for diversion, including restorative justice, should be developed to include education, quality assurance and control, performance measures, reporting, and evaluation.

169 *Statistics Canada, Criminal Victimization in Canada, 2009* (Summer 2010, Vol 30, No. 2), at p. 10, online: Statistics Canada <http://www.statcan.gc.ca/pub/85-002-x/2010002/article/11340-eng.pdf>.

170 The recent 2012 report by the Minnesota Department of Public Safety entitled *Minnesota Juvenile Diversion: A Summary of Statewide Practices and Programming* nicely summarises an approach to planning an effective diversion program. Even though the planning steps are developed in the context of juvenile diversion, they provide a workable framework for more general diversion programs as well. See the full report at: US, Minnesota Department of Public Safety, *Minnesota Juvenile Diversion: A Summary of Statewide Practices and Programming* (June 2012), online: Minnesota Department of Public Safety <https://dps.mn.gov/divisions/ojp/forms-documents/Documents/Juvenile%20Justice%20Reports/MINNESOTA%20JUV_DIV%20REPORT_Final.pdf>.

10. EARLY CASE RESOLUTION

Encouraging early principled resolution of criminal cases—the subject of almost every recent commentary on the criminal justice system—has long been a goal of administrators, policy makers and judges. There are two components of this goal: timeliness and principled resolution.

The most significant recent initiative to encourage early resolution in criminal matters was the development and implementation of the CCFM rules in 1999.[171] As discussed in greater detail in the Annex, the central features of the CCFM rules are the development of an arraignment court to encourage early resolution and a trial readiness hearing to increase the likelihood that trials will proceed and not collapse on the first day of hearing. Both were intended to encourage prosecutors and defence to assess their case, and for the accused to have an offer in relation to a sentence that is realistic and attractive compared to the likely sentence after trial. This initiative is widely acknowledged to have failed to produce earlier resolutions and to have perhaps made the system less efficient by adding appearances in every case.

10.1 CONTEXT

The majority of all criminal cases in Provincial Court are resolved in just over three months of the first appearance. Only 16% of cases are actually set for trial, and only 4.5% of cases have even a single trial appearance. Of that appearance, 30% of the 4.5% actually proceed to trial. About 40% of accused plead guilty at that time. The remainder are stayed or, in a relatively small number of cases, are adjourned to another date. In a few cases a bench warrant for the arrest of the accused is issued for failing to attend.[172]

Broadly speaking, there appears to be an initial period in which many cases are resolved. Then, in a substantial number of cases there is a period that may span many months before the matter is resolved or a trial date is set. Even when a trial date is set, a further 11% of cases still settle without actually having a trial appearance, and approximately 70% of the few remaining cases then resolve on the date of trial.

Although the high resolution rate is well known and reported on, the resolution rate and timing of resolution for different categories of offences and by region may vary. There is no easily available data that segregates patterns of resolution by category of case, court location or other variables such as individual prosecutor.

As discussed earlier, the prosecution service is responsible for approving charges in British Columbia. There is a single standard for written RCCs, irrespective of the nature or type of alleged offence. This standard is that there should be a substantial likelihood of conviction and that prosecution is in the public interest. It requires full disclosure of the facts and evidence sufficient to support the laying of criminal charges and must meet the criminal standard of proof beyond a reasonable doubt. There will be a substantial likelihood of conviction where there is a strong, solid case of substance to present to the court.[173]

171 For further information, see: Associate Chief Judge Anthony J. Spence, Provincial Court of British Columbia, *Report to the Chief Judge on Criminal Caseflow Management Rules* (April 2002), online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/types-of-cases/criminal-and-youth/report-on-caseflow>.

172 This is described in greater detail above in Section 3.

173 British Columbia Ministry of Attorney General, Criminal Justice Branch, *Charge Assessment Guidelines*, CHA 1 (2 October 2009), at p. 1, online: Ministry of Justice <http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CHA1-ChargeAssessmentGuidelines-2Oct2009.pdf>.

Only in exceptional cases is it contemplated that charges may be laid where the standard evidentiary test has not been met. In these exceptional cases, the standard is a reasonable prospect of conviction.[174]

Presently, the Charge Assessment Guidelines mandate that the basic requirements for every RCC are as follows:

> 1. A comprehensive description of the evidence supporting each element of the suggested charge(s);
> 2. Where the evidence of a civilian witness is necessary to prove an essential element of the charge (except for minor offences), a copy of that person's written statement;
> 3. Necessary evidence check sheets;
> 4. Copies of all documents required to prove the charge(s);
> 5. A detailed summary or written copy of the accused's statement(s), if any;
> 6. The accused's criminal record, if any; and
> 7. An indexed and organized report for complex cases.[175]

While Gary McCuaig, QC, has recommended in his report that responsibility for charge approval remain with the prosecution service, he has also recommended that an abbreviated RCC be considered in specified circumstances.[176]

Existing Crown counsel policy requires that a prosecutor is to explore resolution only after being satisfied that the charge approval standard has been met. This is a continuing responsibility which applies to the consideration of alternative measures and to accepting a plea of guilty. If for any reason the prosecution forms the view that the case no longer meets the charge approval standard, the appropriate response is to enter a stay of proceedings rather than negotiate a guilty plea with a reduced sentence.[177] This departs from the approach taken in television crime shows but assures Canadians that prosecutors approach each case with an individualized concern that persons not face charges that cannot be proven to the criminal standard.

10.2 CONSULTATIONS

Although the majority of all cases in the Provincial Court are resolved without a trial appearance even being scheduled, these resolutions may take many months to achieve. There was widespread agreement throughout the consultations that there are insufficient incentives to encourage early, principled resolutions.

Thinking within the community has also undergone dramatic change with the consideration of a redesign of Provincial Court criminal process and scheduling. This initiative will place more clear responsibility on the parties to obtain resolutions in the initial phase of a case. One possible lesson of the past decade may well be judicial involvement in this resolution phase should be reserved to adjudicating disputes and reserving case management to particular cases and only if a matter has had a clear opportunity to resolve.

The prosecution service has determined that to facilitate early resolutions and other management improvements, transition to a file ownership system will be made.

It was also suggested that late resolutions appear to be clustered around impaired driving and domestic violence cases. The Kelowna Domestic Violence Project suggests that this may be due to accused in both cases hoping that the delay in the system rebounds to their advantage, the case against them becoming unprovable. It was also suggested that the current system failed to incentivize prosecutors

174 British Columbia Ministry of Attorney General, Criminal Justice Branch, *Charge Assessment Guidelines*, CHA 1 (2 October 2009), at p. 1, online: Ministry of Justice <http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CHA1-ChargeAssessmentGuidelines-2Oct2009.pdf>.
175 British Columbia Ministry of Attorney General, Criminal Justice Branch, *Charge Assessment Guidelines*, CHA 1 (2 October 2009), at p. 6, online: Ministry of Justice <http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CHA1-ChargeAssessmentGuidelines-2Oct2009.pdf>.
176 See Schedule 11.
177 British Columbia Ministry of Attorney General, Criminal Justice Branch, *Charge Assessment Guidelines*, CHA 1 (2 October 2009), at p. 3, online: Ministry of Justice <http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CHA1-ChargeAssessmentGuidelines-2Oct2009.pdf>.

to seriously assess the likelihood of conviction in cases set for trial at an earlier point, rather than waiting until the last minute.

It was observed that administration of justice offences rarely interfere with resolution of the underlying offense. They are often settled by way of stay or other similar agreement as part of the resolution of the underlying offence. administration of justice offences are often resolved summarily but rarely occupy much trial time on their own.

The interplay of mental health and addiction issues with socially disruptive behaviour and demands on police has now become widely understood. Police leadership has expressed a strong preference for managing people dealing with mental illness or addictions through means other than enforcement.

Early resolution for these people frequently involves the offender accessing health or social programs. Virtually all of these programs are provided by organizations outside the Ministry of Justice and are provided by, or funded by, health authorities. Programs and services include both residential and day programs, as well as integrated supervision teams that aim to keep individuals with mental illness and substance abuse problems stable in the community.

Defence counsel report that the willingness of prosecutors to seek alternate measures varies dramatically from prosecutor to prosecutor. Prosecution service leadership reaffirmed the policy commitment to seeking alternate measures where appropriate. This appears to be an issue of persuading individual prosecutors of the soundness of this approach.

Finally, restorative justice advocates strongly argue that the system as a whole has to enable victims and offenders to access restorative justice programs for more serious cases and to liberate restorative justice from the perception that it is only appropriate in extremely minor offences such as shoplifting.

10.2.1 Police/Prosecution Interface

During consultations, many police officers expressed considerable frustration with the existing charge approval system, and this frustration no doubt underlay the request to Gary McCuaig, QC, to review the charge approval system generally. I agree with Gary McCuaig, QC, that the suggestion that charge approval be permitted by police officers is a proxy for other frustrations with their relationship to the Crown.

In the consultations, it became apparent that most police officers would not wish to have the authority to charge individuals, particularly in light of the very high rate of stays of proceedings experienced in those jurisdictions, such as Ontario where the charging authority rests with police officers.

Put simply, there appears to be no system efficiencies or clarity gained by authorizing police officers to lay charges. The better approach would appear to be to identify and address the underlying sources of frustration with the current system.

During consultations, these other frustrations were expressed in a variety of ways, including:

- The sense that all RCCs must be perfect before they are considered by Crown counsel, even in cases where resolution can be predicted. An extreme and unusual but often cited example would be an accused who is aware of the investigation, acknowledges responsibility, and offers to plead guilty but must await the completion of a RCC and the consideration of charges by Crown counsel before having that request resolved;
- Frustration with perceived low charge approval rates, particularly in complex investigations;
- Frustration with the absence of consultation around stays of proceedings being entered, particularly where there is a perception that the prosecution was forced to choose between cases;
- Perceived low charge approval rates for minor offences and administration of justice offences; and
- The general sense that the prosecution's sense of independence interferes with joint strategic direction.

The prosecution service for its part acknowledges and accepts its constitutional independence from the police investigative function. This will of necessity create tensions in the relationship from time to time.

The prosecution service would maintain that:

- Crown counsel must exercise the core of prosecutorial discretion whether to charge an individual on an individualized basis and must similarly make decisions as to resolution on an individual basis.
- Efforts to provide advice during a course of investigations to improve the quality of the RCC and the likelihood of meeting the charge approval standard have improved in recent years, particularly with respect to complex investigations where dedicated Crown have provided ongoing and strategic advice with respect to the investigation.
- It is a prosecutor's duty to disappoint the police from time to time where a case is no longer viable, notwithstanding the police view that the accused is a person who represents a risk to the community or that the category of offence is particularly important.

Both prosecutors and police reported that excellent working relationships existed between the leaders at the Crown/Police Liaison Committee, and there was substantial progress towards addressing friction in the broader relationships in the justice community.

It is also clear from consultations that many of the frictions likely to arise can be reduced through effective and ongoing communication between prosecutors and police.

In considering the data available from the system, the frequently expressed observation that there is a low approval rate for administration of justice offences does not seem borne out by the evidence. It may rather be a frustration rooted in the common bundling of these offences with the underlying substantive offence in a common sentencing submission to the Court. Police officers are frustrated that respect for the law appears to be trivialized in the system's treatment of these offences.

10.2.2 Supervision

Corrections must of course supervise persons in the community who are subject to court orders as part of the terms of their release by the police or the court or as a term of their probation.

The Corrections Branch, during consultations, raised the suggestion that evidence-based information on risk assessment is currently under-utilized by the other justice participants. They have proposed that information related to the theory and application of evidence-based risk assessment be made more readily available and that it would assist among other things in better informed terms of release and sentences.

10.3 ANALYSIS AND RECOMMENDATIONS

Our current system tends to organize itself around the timing of trials, and yet we know that in fact over 84% of cases are resolved without a trial date being scheduled and 98% are resolved without trial.[178] Resolutions can occur at any time in the process, up to and including the first day to trial, with the existing processes to support early resolution appearing less effective than needed.

Some of this is in the execution of what is otherwise sound policy. It seems clear that providing early sentencing positions that are reasonable does indeed enhance resolution rates. There is general agreement that the absence of file ownership means that prosecutors do not have to account for the sentencing positions they take earlier in the course of the case. Similarly, there is widespread agreement that despite jurisprudence that supports the imposition of stiffer penalties where an accused unreasonably delays pleading guilty, judges are rarely seen as discouraging later pleas.

Delay in reaching early resolutions can be attributed to a variety of causes, including:

- No process to encourage resolution before the first court appearance of those who are given a

178 This is described in greater detail above in Section 3.

notice to appear in court by the police, currently about six to eight weeks after the alleged commission of the offence;
- Lack of file ownership by the prosecutor, so he or she may not be ready to engage in early discussions leading to resolution;
- Delay in accused retaining counsel or getting access to duty counsel, so the accused may not be ready to enter into resolution discussions;
- Lack of incentives for early resolution;
- Disincentives to early resolution, including defence recognition that the prosecution's case will often deteriorate over time;
- No clear timelines for completion of discussions regarding resolution; and
- Trial dates which are sufficiently far in the future to increase uncertainty about the viability of prosecution on that date.

The challenge in this area is to learn from past efforts and put in place changes that will encourage principled early resolution, preferably before a trial date is set.

In my view, the central elements that are required in order for this to be accomplished are
- Multi-sectoral recognition that the vast majority of cases can, should and will be resolved rather than tried;
- Aligning the investigation and charge approval process in such fashion as to encourage exploration of resolution with the accused at the earliest possible date;
- Timely disclosure of the prosecution's case to enable defence counsel to professionally and properly advise the accused on resolution;
- Developing court scheduling methods to support and encourage resolution and to provide principled, predictable and clear incentives which favour resolution; and,
- More effective use of the risk assessment skills within Corrections to identify and inform proposals for resolution.

It is apparent that the professionals engaged in the system recognize that incentives must be in place to encourage an individual suspected of an offence to take accountability for his or her actions and to seek reconciliation with the victim and the community. The defence counsel in this context are serving their client's interest in a system in which delay may interfere with the prosecution's proof of the case in a host of ways. Defence counsel readily acknowledge that there would be a higher percentage of resolutions if early predictable trial dates were generally applied and if appropriate incentives existed to encourage and inform the accused to instruct his counsel to seek resolution.

During the consultations, it was reluctantly agreed that the incentives intended to be put in place by the CCFM rules simply did not materialize. The hope then was that the prosecutors would offer a sentencing position which would not be improved if it was declined by the accused and the case then proceeded to trial. To the contrary, the case docket has become so dependent on last minute resolutions that both prosecutors and judges appear relieved when an accused pleads guilty on the first day of trial, and they are reluctant to carry through on the assurance that the initial sentencing position was the best on offer. Indeed, defence counsel routinely observed that in most cases they were highly confident that the sentence available on the first day of trial would be less severe than that made available on the initial sentencing position, at arraignment or at the trial readiness hearing. This is compounded by the obvious risks that prosecution's witnesses may not appear at trial or other gaps in the prosecution appear and require a stay of proceedings.

Prosecutors are reluctant to accept abbreviated RCCs for a number of reasons, including:
- A reasonable concern that once the case is cleared by charge under the police system, it is difficult to secure follow-up investigative efforts if the case is not resolved.
- The cases of individuals willing to plead in the absence of a full investigation and charge approval consideration are rare, and no guilty plea should be accepted unless the charge or charges would have been well founded.

- There is a reasonable concern that, unless there is full disclosure of the investigation at the outset, unnecessary defences may arise respecting disclosure, and incomplete disclosure will prevent defence counsel from knowing enough to fully advise their clients as to resolution.

10.3.1 Early Resolution

The proposals for enhancing early resolution made by the prosecution service, Legal Services Society (LSS) and the Provincial Court build on current practices and redirect the focus away from court-based process. To a substantial degree the means by which this is enabled—through changes in the prosecution service management systems, changes to legal aid and by the defence bar—have not been identified and need to be developed by those stakeholders working co-operatively. There is little that I can add to the task they have already set for themselves. I do think, however, that one opportunity for improvement in this area arises from the consultations that deserves brief mention: expanding the use of pre-charge resolution.

10.3.2 Pre-Charge Resolution Process

The current period of time between the commission of an offence and the expected first appearance in court, usually six to eight weeks, opens opportunities for creative approaches to early resolution that have not been fully utilized. The suggestion that the Court should rely on the parties to seek resolution outside of court in the majority of cases raises the question of whether resolution can and should take place before charges are approved in a substantial number of cases. While I am advised that this indeed happens now in some cases, I believe that its significant expansion is worth consideration.

During consultations police urged greater flexibility and co-operation respecting the disposition of cases; this can be most easily done before the charge approval process is completed. Similarly difficulties around the completeness of an investigation and/or the completeness of an RCC for the purpose of laying a charge can be dealt with more flexibly if the individual and counsel are involved in resolution discussions from the outset.

There are potentially many advantages to enhancing this process. It would encourage joint consideration by police and prosecutors to seek appropriate alternatives to enforcement. It would open opportunities for defence counsel to advance their clients' interests before positions have hardened in the prosecution service. In effect it would create a resolution phase that would operate before the "pre-trial" phase of proceedings before the courts.

Finally, such a process would need to provide for transparency in results and reporting to the public.

Recommendation: A new approach to pre-charge resolution should be taken that maximizes the opportunity to resolve matters before formal charge approval is complete.

10.3.3 Early Resolution and an Abbreviated RCC

Various police representatives proposed that an abbreviated RCC be made available in appropriate circumstances. That proposal has been endorsed for serious consideration by Gary McCuaig, QC, and I add my endorsement of this proposal with some comments and concerns.

The duty not to approve charges against persons who could not be proven guilty is a solemn duty. Though it is important to respect the rule of law, it is nevertheless obvious that the current system fails in several respects, and one of these is its failure to systematically pursue early resolutions.

As I understand the possible approach, it would, in appropriate cases, involve delivery of an abbreviated RCC to the prosecution service, with the intent that sufficient evidence would be gathered to meet the charge approval standard and make resolution clearly attractive to the potential accused.

The concern raised by prosecutors is that in their experience police members place a great deal of administrative importance on a file having been

"cleared by charge," and that obtaining follow-up investigative work after charge approval to ensure a trial-ready brief is regularly difficult.

Success with this approach depends heavily on police investigators remaining available and properly motivated when resolution is not reached. The file must also be made trial ready. I am confident that could be achieved if the police saw a more rational upfront approach to resolution by the others in the system.

This is an area already identified for reform by the prosecution service, and several of its projects are aimed at enhancing this important means of resolving cases. The significant changes implied in the revised court process means that substantial work needs to be undertaken by the prosecution service. I have little substantively to offer, apart from these brief observations to this important work.

Similarly, it is important that LSS ensure its policies support such an initiative and provide appropriate support for people who would benefit from early advice.

Recommendation: An abbreviated report to Crown counsel form should be considered for appropriate cases by the Police/Prosecution Liaison Committee in consultation with Legal Services Society and the defence bar.

10.3.4 Crown File Ownership

The prosecution service has decided to seek to reform its assignment methods so as to have individual prosecutors responsible for a case from beginning to end, or at least for a larger portion of the management of the file—colloquially known as file ownership. It is expected that file ownership will provide the right type of incentives to prosecutors to seek resolution of what is now "their case," and that continuity will assist in relationship with police, witnesses, victims, defence counsel and the community. Put simply, the prosecution service will have identified a person responsible for that case.

The significance of this administrative change should not be understated. I commend the leadership of the prosecution service for being willing to undertake such a major administrative change in its work for the public good. During consultations, I heard very little dissent from this proposal, which I believe reflects the conclusion that the professional community as a whole recognizes that, in order for the prosecution service to improve its performance, this change is necessary.

Recommendation: The prosecution service should adopt file ownership as the default administrative process for the handling of criminal matters.

10.3.5 Expanded Role for Duty Counsel or Other Forms of Early Advice

To expand the effectiveness of early resolution procedures including the use of pre-charge resolution, accused people need to know how to get early access to legal advice. Early principled resolution is best achieved when an accused has an opportunity to obtain legal advice that is proportional and timely but above all delivered in his or her own interest.

The LSS has proposed an expanded model of service to facilitate early resolution. In particular, they have suggested that they could change the model of how duty counsel services are currently provided, so that duty counsel would be assigned to the same court on a continuing basis. This would permit them to retain conduct of matters that can be resolved in a reasonable period of time. This would also avoid the current situation where an accused person might have to speak to a number of different lawyers prior to the resolution of their matter.

LSS has also proposed changes to the legal aid tariff to facilitate the availability of legal assistance in disposition courts.

As well, to advise an accused as to the charges and their best options for resolving or obtaining counsel for the case, it would be beneficial if advice services could be funded, which would be available very early in the process (i.e., pre-charge).

With respect to pre-charge resolution, as noted above, it is critical that there be early access to legal advice. This should begin with police giving people information about how to access legal advice at the same time that they give them their notice to appear in court.

Consideration should be given to how best provide early access to legal advice, but it seems to me that this might be achieved most cost-effectively if some form of centralized telephone advice were implemented. Those providing the advice would need to be able to get information from the prosecution service about the potential charge, as well as the police report. This would be a good opportunity to explore the potential of internet transfer of key information from the prosecution service to duty counsel and the private bar, to facilitate the provision of early, informed advice at the pre-charge stage.

Recommendation: The Legal Services Society should be supported to provide legal services to promote early resolution by

- **Assigning duty counsel to the same court on a continuing basis;**
- **Changing the legal aid tariff to facilitate legal assistance in disposition courts; and**
- **Providing advice and other services pre-charge to facilitate resolution at that point.**

Recommendation: Police should advise all persons who are given a notice to appear in court on a future date of the possible availability of legal assistance and how to access it.

11. PRE-TRIAL AND TRIAL

Currently, the Provincial Court supervises cases from first appearance until final disposition. Accused appear in court as directed while they apply for legal aid, retain and instruct counsel, have their counsel discuss possible resolution of the matter with the prosecutor, plead not guilty or guilty, and set the matter down for trial or for sentencing. There are no timelines or time limits for the completion of any of these stages of the process, although judges do what they can to encourage the timely completion of each of these steps. If an accused pleads not guilty, a trial date will be set which may be many months away, depending on the court location.

In this section I discuss the Provincial Court's project to make better use of judicial time and improve the timeliness of the process. I also deal here with other selected aspects of case management in the Provincial Court. In particular I make recommendations in relation to the use of other professionals such as judicial justices, justices of the peace and judicial case managers (JCMs) to assist in the work of the Court.

I also address to a modest extent the significant issue of complex case management, which is the central question facing the Supreme Court in its management of its criminal caseload.

11.1 CONTEXT

As already noted, over 98% of the approximately 100,000 criminal cases are filed and determined in the Provincial Court. The remaining 1%–2% are filed and determined within the Supreme Court of British Columbia.[179] The information system is not able to indicate how many trials were actually held in Provincial Court, but based on the information in the figure in Section 3.11 above, a reasonable estimate is about 1,500 trials a year. Approximately 415 criminal trials were held in 2011/12 in the Supreme Court.[180]

Most decisions in the Provincial Court are rendered orally; there were 111 criminal case decisions posted to the Provincial Court website in 2011/12. There were 239 decisions posted to the Supreme Court website in 2011.

Data on the length of trials in both courts is extremely limited. Although there is a view that criminal trials have lengthened in the Provincial Court, most trials are still scheduled for half a day or less. Supreme Court trials are much longer but again there is no data about the length of trials, whether they are getting longer, and whether trial length is exceeding estimates.

The costs associated with longer Supreme Court trials appear to have escalated dramatically in recent years. The prosecution service reports that approximately 24% of its prosecutors are focused on cases in the Supreme Court of British Columbia.[181]

The time to trial in the Supreme Court is not a significant issue for shorter trials, and dates can be obtained for criminal trials of 10 or fewer days in just a few months. Delay in that Court is associated with lengthy periods of pre-trial motions and other hearings that defer the setting down of the matter to trial. Several cases have recently been engaged for more than a year in pre-trial motions.

Outside of the largest Supreme Court registries in the province, criminal trials now dominate the trial work of the Court. In eight Supreme Court

179 See discussion in Sections 3.6 and 3.7 of this Report.
180 Supreme Court of British Columbia, *Annual Report 2011* (Vancouver: Supreme Court of British Columbia, 2011), at p. 55, online: Courts of British Columbia <http://www.courts.gov.bc.ca/supreme_court/about_the_supreme_court/annual_reports/2011%20Annual%20Report.pdf>.
181 Major cases (or those which would likely fall within the scope of the Criminal Justice Branch's Major Case Management Model) would ordinarily be tried in the Supreme Court of British Columbia.

registries in the province there were no civil trials in 2010/11.[182] The substantial majority of all trials held outside of the three busiest registries—Vancouver, New Westminster and Victoria—were criminal trials.[186] The predominance of criminal trials in the trial work for the Supreme Court Registries outside of the major centres may increase with the passage of the new *Family Law Act* and the further diversion of family law matters away from court.

The make-up of criminal work outside the largest Supreme Court registries may well be different as it may include not only cases that must proceed to trial in the Supreme Court but also elections for Supreme Court trial by accused for a variety of reasons, including the availability of earlier trial dates.

11.1.1 Provincial Court

The Provincial Court has, on an accelerated basis, investigated the implementation of a new caseload management system and court scheduling process. That project is described briefly in Schedule 5.

The goal of the project is to reduce the number of administrative appearances in court through the reconfiguration of both the court's processes and systems. The proposal, as I understand it at this early stage in the project development process, is exploring a system where administrative matters will normally be dealt with outside of the courtroom. This will be supported by the prosecution service changing its method of managing files so that there is much greater continuity with respect to individual files, an approach known as Crown file ownership. This will permit defence counsel to have discussions at an early stage with a prosecutor who is fully informed about the case. At the same time, responsibility for ensuring that administrative matters are completed will be transferred to judicial officers outside of the courtroom. These may be judicial justices, JCMs or court services justices of the peace. In some locations disposition courts may also be established so that those who plead guilty are able to have their matters heard.

With respect to matters set for trial, they would not be assigned to a particular courtroom or a particular judge. Instead, on the day set for trial, every case would be considered by a judge and only those matters deemed by that judge as being ready to proceed would be assigned to a fully staffed court. Although the use of assignment court will not in itself reduce the collapse rate overall (which remains quite consistently at about 70%) it should ensure greater utilization of judicial capacity by ensuring that matters set before a judge will not collapse.

The project objectives are to enhance citizens' access to timely justice by

- Developing and implementing new scheduling practices and file management that will make the best use of justice system resources;
- Moving administrative (criminal case) appearances out of the courtroom where feasible;
- Improving scheduling of criminal, family and civil trials in the Provincial Court through the use of an assignment court and/or other vehicles designed to address the high rate by which cases set for trial fail to proceed;
- Creating an enabling technical infrastructure and application to allow for the integrated scheduling of trials; and
- Engaging partners across the justice system where reasonably necessary to ensure systemic change.

In my opinion this approach has many attractions:

- It builds on the success already experienced in Manitoba and Alberta, with similar approaches.
- It recognizes that the efforts to involve the court in improving early resolution rates through the arraignment court and related processes have been unsuccessful.

182 Supreme Court of British Columbia, *Annual Report 2011* (Vancouver: Supreme Court of British Columbia, 2011), at p. 55, online: Courts of British Columbia <http://www.courts.gov.bc.ca/supreme_court/about_the_supreme_court/annual_reports/2011%20Annual%20Report.pdf>.
183 Supreme Court of British Columbia, *Annual Report 2011* (Vancouver: Supreme Court of British Columbia, 2011), at p. 55, online: Courts of British Columbia <http://www.courts.gov.bc.ca/supreme_court/about_the_supreme_court/annual_reports/2011%20Annual%20Report.pdf>.

- It recognizes the advantages of predictable early trial dates to enable counsel for the Crown and counsel for the defence to carry out their work on a timely and informed basis.
- It recognizes that the majority of cases can be resolved without significant judicial input or time.
- It recognizes the need for a new type of judicial case management for those cases which do not become resolved initially.

11.1.2 Early Trial Dates

Revisions to the assignment of trials may not by themselves reduce the collapse rate, although they should significantly increase the use of judicial time. As noted, a high collapse rate has long been a feature of criminal process in the Provincial Court, and it has eluded remedy for a long time. There are some indications that dramatically reduced times to trial may well have the sought after effect of encouraging early pleas and other resolutions to cases. To dramatically reduce times to trial the implementation of the new scheduling system may need to start fresh, with the cases in the system being gradually run out. Similarly, other influences on trial scheduling such as choice of defence counsel and prosecutorial scheduling will undoubtedly need to be addressed. The Kelowna pilot, with a small number of a particular type of offence, made only one hour of trial time available on the first appearance for trial. Whether that approach is scalable or desirable would need to be addressed.

From the work carried out by the Review, it would not appear likely that modest changes to the times to trial or other improvements that are worthwhile but incremental will budge the collapse rate. A well thought-out and co-ordinated approach that emerges from consultations across the system is required.

I do not underestimate the challenges of making this change in terms of the practice of law, the management of cases in the court and the expectations of all those affected by the process, but I do believe that it is essential to meet legitimate public expectations of the justice system.

11.1.3 Backlog Reduction Project in the Provincial Court

The Provincial Court reforms contemplate the assignment of early trial dates to new cases. This of course raises the question of how to address the cases already in the system. A project will have to be undertaken to permit the handling of both streams of cases while they overlap for a period of time. Pending the introduction of the new system, the reduction of the backlog of older cases should be given a high priority. Fortunately, the circumstances exist that should make this possible.

The backlog of older cases has in fact been slowly decreasing since 2006/07, as the Court has disposed of more cases than it has been receiving for several years. Despite this, the age of the cases in the backlog has been increasing. Apparently, the efforts to reduce the caseload to date have not previously given priority to dealing with the oldest cases.

The chart in Section 3.13 shows the slight upward trend in pending cases over the last decade. It also shows a substantial drop in 2011/12 because of the expedited resolution of 8,000 impaired driving cases. Within the pending cases, however, the percentage of cases older than 240 days, or eight months, was slowly growing, to a high of almost 18,000 cases in 2010/11. That trend sharply reversed in 2011/12, with cases older than 240 days dropping to about 11,000 out of a total pending caseload of just over 26,000.

Although the number of pending cases is lower, the average time to trial actually increased slightly in 2011/12. Thus the decline in total pending cases and the decline in the number of oldest cases in the system did not result in a reduction in the time to trial.[184]

Nonetheless, the decrease in pending cases and percentage of cases older than 240 days broaden the choices available for judicial administration. Existing

184 For further discussion, see Sections 3.12 and 3.13 of this report.

resources will permit the Court to continue the trend of reducing pending caseloads, even if the Court reallocates some judicial resources from criminal to child protection, family and civil cases. This also means that the introduction of a new scheduling system will not occur in an environment of increasing caseloads and pressure on the system.

There is no reason to wait until the introduction of the new system to start working on the older cases. Indeed, the recognition by all the justice participants of the need to give priority to the older cases provides an opportunity to collaborate on the best means of achieving that goal.

I recommend that a working group be constituted with representatives from the judiciary, Crown counsel, LSS, court services, policing and Corrections supported by a project management office. The working group would be comprised of senior operations rather than executive or policy people, with the expectation that members will have the confidence of their organizations. Consideration should be given to having the working group co-chaired by a Crown and Judicial representative.

The working group should identify measures that can be implemented immediately.

This is intended to be a working group, rather than a pilot or policy development body. Members would carry recommendations to their institutions and report to the working group on decisions and progress.

Priority should be given to strategic intervention in cases that can be resolved on a principled basis, cases that are particularly vulnerable to problems arising from delay, and those that, absent of active intervention, would raise legitimate public concerns over the timeliness of the disposition. The approach might focus on age, type of case or regional considerations.

Disciplined measurement of performance should be included from the outset and a business intelligence component should be included in the work plan. There need to be clear goals set and reporting on achievements toward those goals.

11.1.4 Possible Approaches

Since this working group will be performing a short-term intervention in the system it must be flexible and willing to adopt innovative approaches. It would not be appropriate to dictate how the working group approaches its task, but here follow some suggestions made by participants in various contexts:

- Crown analysis of outstanding cases to assess appropriateness for early disposition by way of plea or stay of proceedings;
- Use of temporary Crown disposition teams working in resolution courts in co-ordination with LSS and expanded duty counsel;
- Assessment of what temporary incremental judicial resources, such as increased use of senior judges, or increased use of judicial justices, can be found;
- Use of corrections personnel for early risk assessment for cases which appear appropriate for early resolution; and
- Involvement of community organizations that could enhance use of alternative measures.

11.1.5 Supreme Court

It is obvious that large and 'mega' cases are consuming huge resources and represent a different challenge than those facing the Provincial Court.

The challenges raised by large cases were addressed by the Code-Lesage Report in November 2008[185] and by several conferences and working groups.

Most recently, the Supreme Court Criminal Committee has carried out a pilot program to enhance the effectiveness of pre-trial management of large criminal cases in the Supreme Court of British Columbia. That committee reported on

185 The Honourable Patrick J. Lessage, CM, QC & Professor Michael Code, *Report of the Review of Large and Complex Criminal Case Procedures* (November 2008), online: Ontario Ministry of Attorney General <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/lesage_code/lesage_code_report_en.pdf>. In several respects it urged the adoption in Ontario of measures already taken in British Columbia.

the outcome of the pilot program[186] and recently announced the extension of the pilot to all Supreme Court registries throughout the province.

The pre-trial sub-Committee of the Supreme Court has declined to this point to recommend new criminal rules in relation to pre-trial management, and trial management lies outside its mandate.

11.1.6 Court of Appeal

As noted, the Court of Appeal has been conducting a pilot project with the goal of having all hearings in criminal appeals take place within a year.[187] That pilot has been extended a year until the end of 2012, and no data on results are yet available.

11.2 CONSULTATIONS

There was universal agreement during consultations that an early, certain trial date has many advantages. The results of a recent pilot project in Kelowna demonstrates this potential.[188] On the initiative of the Administrative Judge, a selection of 68 domestic violence cases were assigned very early trial dates within 60 days. They were each scheduled for one hour of hearing and notice was given that the complainant would be expected to testify during that period of time. The parties were not assured of when the trial could be completed, and the court specifically noted that normal accommodations of counsel's calendars might have to give way to the early trial date.

All but two of the cases resolved prior to the first trial appearance. It is unknown whether the other two proceeded to judgment. This limited pilot suggests that the existence of a very early trial date at least for this body of cases facilitated the early resolution of the matters.

The Review received a large number of submissions that contained various suggestions as to how the Provincial Court should change its processes, most of which are eclipsed by the Court's own project. Submissions were received that more reliance should be placed on professionals other than judges. It was also suggested that appropriate work needs to be provided to judicial justices, justices of the peace and JCMs for the obvious advantages of cost-effectiveness and, in the case of JCMs, the more effective development and use of managerial expertise.

11.3 ANALYSIS AND RECOMMENDATIONS

The Provincial Court is developing an innovative approach to rethinking the scheduling of criminal cases and trials as already described.

This project has benefited from an assessment of strengths and weaknesses of previous reform initiatives in British Columbia, as well as reform in other jurisdictions. It is also proceeding in a collaborative fashion with both the Criminal Justice Branch and the Court Services Branch. However there is an opportunity here for this project to demonstrate a truly systemic approach to criminal justice reform, with the sort of project management rigour that is usually lacking in justice reform projects.

The significance of culture and the importance of involving everyone who will be affected by the reform are important lessons of the past. Sometimes it is not clear at the outset how a particular change might affect another organization—"we don't know what we don't know." So it is critical to involve a wide range of partners early on to ensure that there is a full understanding of how the reforms impact all of the

186 The Supreme Court of British Columbia, *Criminal Pre-Trial Conference Pilot Project Evaluation Report* (18 January 2012), online: Courts of British Columbia <http://www.courts.gov.bc.ca/supreme_court/about_the_supreme_court/Criminal%20Pre-Trial%20Conference%20Pilot%20Project%20Evaluation%20Report%20-%20January%2018,%202012.pdf>.
187 British Columbia Court of Appeal, *Annual Report 2011* (Vancouver: British Columbia Court of Appeal, 2011), at p. 23, online: Courts of British Columbia <http://www.courts.gov.bc.ca/court_of_appeal/about_the_court_of_appeal/annual_report/2011%20ANNUAL%20REPORT.pdf>; and British Columbia Court of Appeal, Practice Directive (Criminal), *Pilot Project Regarding Criminal Conviction/Acquittal Appeals* (28 March 2012), online: Courts of British Columbia <http://www.courts.gov.bc.ca/court_of_appeal/practice_and_procedure/criminal_practice_directives_/Criminal%20Pilot%20Project%20Regarding%20Criminal%20Conviction%20Acquittal%20Appeals.htm>.
188 Information provided to the BC Justice Reform Initiative by the Office of the Chief Judge, Provincial Court of British Columbia.

participants, giving them an opportunity to contribute to the solutions. The nature of the justice system is such that each of the participants has the unfortunate ability to undermine the carefully developed plans of any of the others.

I would encourage the Provincial Court and the Ministry to consider how this project might benefit from expertise on project management and systemic analysis, such that it achieves the significant culture change it seeks.

Recommendation: The Criminal Justice and Public Safety Council support initiatives to

- **Create timelines for early resolutions;**
- **Impplement the Provincial Court Process and Scheduling Project;**
- **Substantially reduce the normal time to trial; and**
- **Reduce the current case backlog to bring all pending cases into compliance with the new standards being developed by the Provincial Court.**

11.3.1 Use of Judicial Justices and Other Professionals in the Provincial Court

While serving as Chief Judge, the late Hugh Stansfield expanded the management of cases by professionals operating under judicial supervision rather than by the judges themselves. The effective use of JCMs will, in my opinion, remain an important part of any successful Court Scheduling Project. The question naturally arises as to whether that process should be taken further.

The availability of services from qualified professionals other than tenured judges can help to improve efficiency, while allowing judicial skills to be concentrated on the most important judicial work.

There are a number of judicial justices working part-time with contract terms of several years available for assignment by the OCJ. Transferring responsibility away from sitting judicial justices into an administrative body (in relation to provincial ticketing offences) may potentially free a number of judicial justices for other work. These individuals have years of experience that can be made available for other duties in the system. There is a wide variety of judicial duties which can be discharged by a judicial justice.

11.3.1.1 Bail Applications and Preliminary Inquiries

Provinces vary dramatically in their use of judicial justices for hearing bail applications. In British Columbia all after-hours applications (particularly weekend applications) are heard via video by judicial justices centred in Burnaby. Most other applications are heard by Provincial Court judges. In Ontario virtually all bail applications are heard by a judicial justice.

There are several potential advantages to using judicial justices for bail applications:

- The use of judicial justices may bring greater flexibility in service standards and methodology.
- The use of judicial justices may focus and permit increasing standards of performance in relation to bail applications.

There are clear cost savings in the use of judicial justices for bail applications.

Concerns regarding the concentration of bail applications before judicial justices include:

- The view that bail applications—as they involve the liberty of the subject—can be as important as the determination of guilt or innocence, and may result in greater detention rates and unnecessary incarceration.
- The consequences of unnecessary incarceration pending trial are very serious and include demonstrably higher sentences for offenders, potential disruption in an innocent person's life and in some cases an increase in the likelihood to re-offend.
- There is a general sense that the quality of bail decisions are high in British Columbia and that other jurisdictions have problems with bail that we do not share.

One advantage for employing judicial justices for the hearing of bail applications is that the core of judicial resources will be focused on trial and sentencing. In this sense, the system would more

clearly be divided between the management of the early phase of a criminal matter by judicial justices and justices of the peace and the management of trials and sentence hearings by judges.

I agree that a bail decision is an important one that deserves careful and expert consideration. However, we already have a system that uses both judges and judicial justices in relation to bail, since all out-of-hour applications are heard by judicial justices. Although it was reported that complex bail applications raised during the weekend are most often held over for judicial consideration, I do not see why a similar process could not be held during normal working hours.

Concerns over the quality of bail decisions by judicial justices appear to me to be amenable to remedy through the use of careful oversight and training, rather than by continuing the current system. The advantages of greater flexibility also commend themselves to bail applications where timely availability of a bail hearing is at a premium for those in detention. The availability of appeal from the decision of a judicial justice to a judge, in cases deserving reconsideration, should reassure those who are concerned with inappropriate detention rates. Indeed, the broader development of an appeal jurisprudence in respect of bail within the Provincial Court may enhance rather than reduce consistency of practice in bail decisions.

A preliminary inquiry is held where an accused has elected a Supreme Court trial. Revised rules have now encouraged the conduct of focused hearings at which only certain witnesses or issues are addressed. The committal of the accused for trial is rarely an issue in these hearings. In all the consultations in which the conduct of preliminary inquiries was raised, there were very few, if any, who considered that Provincial Court judges should continue to be involved now that judicial justices can conduct them.[189] Based on these discussions it would appear that under the new rules, preliminary inquiries are insufficiently important to merit applying senior judicial resources to them.

I understand that the number of preliminary inquiries is down dramatically; when held, they are focused on particular witnesses or issues. It was reported that some preliminary inquiries are apparently conducted out of preference for trial before a Supreme Court judge, rather than for the benefit of the preliminary inquiry itself. Assignment of all preliminary inquiries to judicial justices would minimize the number of unnecessary preliminary inquiries, and there appears no reason, from a quality point of view, to continue to have Provincial Court judges hear preliminary inquiries.

These are properly questions for the Chief Judge to resolve, in consultation with the Court, but there appear to be compelling reasons to consider changes to the ways in which these aspects of the Court's workload are handled.

Recommendation: Broader use of judicial justices should be considered by the Provincial Court for the hearing of all preliminary inquiries and expansion of their use for bail applications.

11.3.2 Complex Case Management in the Supreme Court

The importance of effective management of large cases to the criminal justice system requires that it be addressed here. However, a great deal of work has been done and is presently underway with respect to the challenges of large case management. Accordingly, I have focused in this part of the work on encouraging worthwhile initiatives already underway and on providing limited comments that may be helpful.

Many of the mega criminal trials of the past decade were at one stage or another at risk of collapse. Although the public is rightly concerned with the costs and complexity of mega trials, in my view the loss of confidence in the event of a collapsed prosecution or mistrial of a mega case would be substantial.

189 *Criminal Code*, RSC 1985, c C-46 s 535.

The growing complexity of investigations (including the use of informants and modern surveillance) and the allegation of criminal organization offences in concert with other criminal charges has dramatically escalated the management task facing the Supreme Court, even since this problem was originally identified.

In our consultations, the Chief Justice of the Supreme Court and representatives of the criminal committee of the Court expressed the view that large criminal cases now require active judicial case management, both prior to and during the course of trial. I agree whole heartedly with this conclusion and my recommendations here are intended only to encourage a more ambitious pace and goals for this project. The Pilot program for pre-trial management has been continued and extended to all Supreme Court Registries in the province.[190] I understand however, that progress in the management of these large cases has been slow and uneven. There is a substantial debate over whether the approach taken thus far will produce the necessary changes to help order these cases.

One issue raised during consultations was the Court's decision not to pass criminal rules as provided for under the Criminal Code of Canada.

The effective management of long criminal cases is critical to the effective use of resources within the system. This concern extends not only to the mega trials but applies particularly to the complexity and length of trials that now take six months which not long ago would occupy no more than one month of judicial time. Despite the common observation in all our consultations that every type of case takes far longer than it used to, the public has received very little institutional response by the Supreme Court to these concerns, in particular the expenditure of public funds, the risk of miscarriage of justice and the general appearance of inadequate management.

To the degree that this Review has applicable insights, I would offer that gradual change runs the risk of failing to achieve the culture change that is needed. Efforts at changing culture through small incremental steps have rarely succeeded. There is a need to see more clear evidence that the Court is determined to effectively manage the time to trial and the time for trial. A wholesale change of approach may well be necessary to achieve the needed scale of change.

I am familiar with all the many reasons why the current, differentiated responsibility continues to be the basic premise of the system. In this view, active case management is an extension of the question-and-answer process that counsel has long been accustomed to with judges. I suggest that something dramatically different is required and that although it carries risks for the Court and the system, no other route has the potential of genuinely delivering fair, timely and effective justice in these complex matters. I am concerned that unless the Court takes more explicit responsibility for the length of time to trial, and length of trial, the very differentiated responsibility that currently dominates the system will continue to limit or prevent the necessary scale of improvement.

I also note that both the prosecution service and Legal Services Society are active and engaged in developing improved managerial capacity and policies in relation to large case management in the Supreme Court.

Based on the work and consultations conducted, I do not make any specific recommendations as to how this process should occur in the Supreme Court. I have concentrated on the question of whether improvements can be made to capacity and focus on the issues.

Virtually every other justice participant, including the Provincial Court, is in the course of obtaining insights from professional management organizations. In consultation with the Court, I understand that there would be an interest in gaining a better understanding of project management as it relates to large criminal cases. In

190 Supreme Court of British Columbia, *Annual Report 2011* (Vancouver: Supreme Court of British Columbia, 2011), at p. 23, online: Courts of British Columbia <http://www.courts.gov.bc.ca/supreme_court/about_the_supreme_court/annual_reports/2011%20Annual%20Report.pdf>.

my view the Court would be assisted by retaining the services of a project manager with experience and skills in project management. Should those be made available then in my view it would unduly hamper that insight to confine the project to pre-trial issues alone. Accordingly I would recommend that the Court be enabled to retain the services of a project manager to consider the adoption of project management principles, in the management of pre-trial issues and complex trials.

Recommendation: The Supreme Court Criminal Committee should be resourced to retain project management expertise to assist in developing best practices in pre-trial and trial management.

12. ROLE FOR RISK ASSESSMENT AND BEHAVIOUR MANAGEMENT

A feature what is frequently called "thinking in silos" is that there is a tendency to think of the different sectors in terms of responsibility for the different parts of the criminal justice process. Thus police are responsible for investigation, Crown is responsible for the prosecution of offences and Corrections is responsible for supervision and custody. However this focus on responsibility overlooks the potential for one sector to assist the others in critical ways. Although largely unnoticed by the general community, Corrections has used evidence-based policy approaches to enhance its skills and confidence in managing persons in the community under conditions restricting their conduct.

The question raised by any systematic review is whether these skills can and should be applied elsewhere in the system.

12.1 CONTEXT

BC Corrections manages persons within a variety of restrictions, both in custody and in the community. The former may be in remand or sentenced. The latter may have been released under various set conditions: from bail pending trial, within terms imposed by police, or by the judiciary with a sentence of probation or a conditional sentence.

BC Corrections has undergone a dramatic shift in its organizational culture—from enforcing court orders to marshalling its resources around an evidence-based risk assessment of offenders. This includes programs and supervision strategies designed and implemented with the goal of improving safety to the community and rehabilitation of the offender. There has been an enormous increase in scientific understanding of the cognitive and psychological factors that cause and influence criminal behaviour. This has led to applying the true correlates of risk to the community, using the best available science to enhance the likelihood of improved behaviour, and to help realize an offender's human potential.

This culture change has taken place over more than 15 years commencing in 1994. BC Corrections believes that its current approach is far more effective in achieving safety for BC's communities, far more effective in helping offenders change their behaviour and realize their potential and far more efficient in the expenditure of public funds.

12.2 CONSULTATIONS

The central tool employed by BC Corrections in its supervision of sentenced persons in the community is a disciplined risk assessment. That risk assessment is a product of many years of research into the correlates of risk in relation to an individual. Contrary to our traditional thinking, the risk of safety is not directly correlated to the characteristics of the particular offence but rather the history, circumstances and characteristics of the individual.

In our consultations with BC Corrections, they identified the potential for taking a similar approach to the management of risk elsewhere in the system. From their perspective, Corrections' successful use of risk management has not been adequately incorporated into the risk management of persons released under terms by police officers, or those released under bail or under terms imposed by prosecutors or judges.

The role of Corrections now is limited to providing the Criminal Justice Branch with risk assessments of potential candidates for domestic violence alternative measures. They have also expanded their role in the recent alternative measures pilot. As well, when requested, they prepare a pre-sentence report. I would suggest, however, that there is room for expanding this role.

12.3 ANALYSIS AND RECOMMENDATIONS

BC Corrections provided me with a proposal, attached to this Report as Schedule 8 which reviews the work they do in relation to risk assessment and how information about risk might improve certain decisions at different points in the criminal justice process. I had the opportunity to discuss this proposal with police officers, prosecutors, defence counsel and judges, both in the context of the terms of release into the community and Corrections' observation concerning their own risk assessment tools.

The concerns raised with respect to employing BC Corrections' insights into other terms of release include the following:

- The risk of an offender re-offending is viewed as a different risk than the risks being managed by prosecution policy or through the bail system;
- The goals of the terms of interim release may include a policing strategy focused on the offender and not focused on risk to the community; and
- Risk assessment is not the only consideration in prosecution and sentencing which must take into account such things as the denunciation of the alleged conduct.

No one disputed the need for improvement in the process by which someone is released into the community pending trial or has conditions placed upon their release into the community as a condition of their sentence. There is a sense that these outcomes are too often a product of legal traditions and could benefit from an effective use of social science insights into human cognition and behaviour.

Recent efforts have indeed been made to improve these systems, including:

- Standardization of some of the terms of release;
- Increased education of police officers.

The differences between the objectives of police, the prosecution, the judiciary and Corrections (and indeed of defence counsel) are real, but there are sufficient similarities for the system to benefit from the knowledge and experience that has been developed within Corrections. Knowing which circumstances are truly correlated to the risk of an accused re-offending while awaiting trial could inform the selection of conditions intended to ensure public safety. To the extent that the police are seeking public safety by closely supervising conditions on prolific offenders, their efforts would be best focused on using the results of a disciplined risk assessment. Similarly, judges, prosecutors and defence considering the best conditions for release into the community would make far better decisions if they were informed by a disciplined risk assessment, which would take into account the similarities as well as the differences of the existing risk assessment protocol.

This exercise would be very different than the traditional pre-sentence report provided for in the Criminal Code, which focuses on an individual's circumstances relevant to a fit and appropriate sentence. Corrections emphasized that the traditional pre-sentence report, however helpful for the determination of a fit sentence, was not directed—neither during the sentence nor afterwards—to the needs of the individual, nor to the best terms likely to secure his or her rehabilitation, nor to the safety of the community.

As discussed elsewhere there is a wide spectrum of views as to the goals and purposes of the terms of release and the related volume of administration of justice offences. In my view, the traditional thinking that focuses on the accused's respect for the court and the system of justice detracts from essential outcomes—which should be the goals for this aspect of the criminal justice system. Put simply, these similar functions should be fully informed by our improved understanding of human psychology and by both the opportunities and limitations of affecting behaviour.

The fundamental goal should be to apply the best learning available to the question of managing the behaviour of those placed under conditions by the justice system. The long term goal for both the offender and the public is his or

her integration into the community as a law abiding and fulfilled individual. Release into the community under conditions informed by the best available evidence may well facilitate that process in a way that improves public safety and enhances public confidence in the justice system.

It is suggested in the proposal that the use of a pre-trial assessment tool which identified lower risk offenders could result in

- Reductions in the numbers of court cases through more early resolutions;
- Reductions in "over-supervision" of offenders;
- Appropriate placement of accused waiting for trial;
- Consistent and appropriate use of pre-sentence reports; and
- Sentences and conditions that are matched to an offender's criminogenic needs and risk, which would ultimately reduce re-offending.

Although the Corrections' proposal is aimed at transferring knowledge to other participants within the system and at the development of specific tools for use at the different points in the process, I suggest that consideration should be given to using Corrections expertise directly wherever possible, recognizing that Corrections would require additional resources to take on this additional role. There may be a variety of options to maximize the benefit of broader utilization of Corrections knowledge and expertise in a cost-effective way. I recognize that this has important funding, human resource and public administration questions, which are best addressed by a deliberate and careful public administration process.

Recommendation: The BC Corrections proposal outlined in Schedule 8 to educate and inform other justice participants of best practices in the assessment of risk should be implemented, and subject to resources, consideration should also be given to enhancing the role of crrections staff in providing relevant advice on risk and behaviour management in relation to release and sentencing decisions and conditions.

13. PROVINCIAL COURT REFORM

This section addresses the recommendations for Provincial Court reforms.

The Court has initiated a substantial project described in Schedule 5 which I endorse and recommend for development and implementation. It has responded positively to the challenges raised in the *Green Paper*.

In a professional working environment, such as one where individual professionals exercise their judgment and skill, the success of any recommendations depends on their acceptance by the professionals who must make them work. Some initiatives in the past were not accepted by those who were expected to carry out the changes. Conversely, when those concerned are anxious and willing to see the system improved, there is no reason to impose solutions. This does not mean that every change needs to be popular with every stakeholder and individual professional, but in a system that is deeply committed to fair process, thorough consultation is more likely to lead to success.

The public's view of the criminal justice system is formed not only on the basis of its aggregate outcomes but also on the perception of how each participant performs. When one institution fails, the public's confidence in that participant and in the system as a whole suffers. Although this makes management all the more difficult, a recognition of both aggregate outcomes and public perception is important in framing recommendations for the separate institutions.

13.1 CONTEXT

The concentration of the Review on matters of criminal process and the issues of delay naturally resulted in a focus on the Provincial Court. For that reason the Review has only considered recommendations relating to that Court's structure and workings.

13.2 CONSULTATIONS

In the course of the Review the principal issues discussed respecting the Provincial Court were:

- How does the Court best organize its process to assist in the resolution of cases within its system?
- Does the Court and the OCJ have the necessary managerial expertise and capacity to effect change?
- Is there a need for more judges, and what is the best approach to judicial complement?

During the consultations there was a wide spread of views respecting judicial leadership in justice reform. Some of these views were very critical of the Court and others were very supportive. Some regarded judicial leadership essential and others considered it marginal to the need to focus on justice outcomes rather than case outcomes. Satisfaction at the Bar with the work of the Court varied widely from region to region.

There was a general consensus that we enjoy a high level of quality in our judges and that overall the results in cases are of a very high quality. In particular members of the Bar were generally satisfied with the degree of criminal law expertise demonstrated by Provincial Court judges. Very few suggestions relating to the actual conduct of trials were made.

Criticism of inefficiencies in the work of the Court was frequently expressed, but this criticism was almost always accompanied with the observation that it was a system failure rather than a want of willingness or energy on the part of individual judges. A wide variety of suggestions related to the Court's internal work assignments were offered by lawyers generally with the observation that the Court should work more creatively to match demand with judicial sitting hours.

It is clear that the Court enjoys broad support for the quality of its judges and their judging, and I am thus very confident that if improvements can be made to its systems, public confidence in all aspects of the Court's work can be achieved.

13.3 ANALYSIS AND RECOMMENDATIONS

Earlier in this Report, I discussed the need for improvements to the scheduling of criminal cases, judicial case management and greater coordination between the courts and other institutions within the justice system. Many of these recommendations will require the leadership and commitment of the Provincial Court in order to be achieved. Success may also require willingness on the part of the judiciary to explore new options for its organization. And to better coordinate the administration of justice, the collaborative working relationships between the executive branch and the judiciary will need to be formalized. In this section of the Report, I discuss aspects of the Provincial Court's organization.

On reviewing the recent history of the relationship between the executive and the judiciary in British Columbia, it is apparent there are several possible sources of friction between the executive and the judiciary that should be acknowledged. These include:

- Alternative models of resolving issues, such as the use of tribunals, are easier for the executive to engage since they are directly amenable to process reform and direction.
- Because of their special status, it is difficult for the Courts to obtain candid input from the general public and other participants. Deference from other legal professionals, social isolation from the general public and focus on the adjudicative aspects of their work may all restrict useful input and criticism.
- The lack of managerial background or experience for most Chief Judges may undermine their confidence and ability to be effective managers.
- The collegial nature of court governance means that judicial leaders may feel restrained in what they can undertake on behalf of the Court as a whole.
- The tradition of leadership through a Chief Judge may have hampered the institutionalization of changes and led to the changes being dropped by successive office holders.
- Court culture places a substantial emphasis on each judge's authority which can mean that the Chief Judge is considered to have only a limited and delegated authority.

There is abundant evidence for these challenges in the recent history of the Courts. I have considered what recommendations might assist in helping the Courts exercise their independence in a setting that has access to greater managerial expertise, has more clear managerial authority and obtains better and more helpful input from the public.

13.3.1 Mission and Vision of the Provincial Court

The importance of having a clear mission statement, vision and goals is spreading from other organizations to the Court. Their role in a Court needs to be adjusted appropriately, but in this respect, courts have needs similar to other organizations.[191]

The Provincial Court's Annual Report 2010–2011 contained a Mission statement, Vision and Goals for the BC Provincial Court. This was an important step forward in applying modern principles of management to the Court. The Mission, Vision and Goals of the Provincial Court are as follows:

> **Mission**
> As an independent judiciary, our mission as the Provincial Court of British Columbia is to impartially and consistently provide a forum for justice that assumes equal access for all, enhances respect for the rule of law and confidence in the administration of justice.
>
> **Vision**
> To provide an accessible, fair, efficient, and innovative system of justice for the benefit of the public.

191 The literature concerning judicial performance mirrors the business and public administration literature in most respects. See Brian Ostrom et al. "Becoming a High Performance Court", *The Court Manager* 26:4 at p. 39.

Goals

1. Excel in the delivery of justice;
2. Enhance meaningful public access to the Court, its facilities and processes;
3. Anticipate and meet the needs of society through continuing judicial innovations and reform; and
4. Ensure that administration and management of the Court is transparent, fair, effective and efficient, consistent with the principles of judicial independence. [192]

The Court has demonstrated leadership in introducing a mission statement, vision and goals in 2010. These principles establish a sound foundation for the Court's ongoing operation and reforms that should be supported by every British Columbian.

These goals are of course very general and for their full realization require sound implementation plans that address performance goals for the Court and the particular means by which these goals will be realized in the work of the Court. An annual implementation plan available to the public, which afforded people the means to better understand how these goals are guiding the Court's work and reforms, would be valuable and helpful to the Court itself.

13.3.2 Powers and Duties of the Chief Judge

There is a surprising degree of uncertainty around the powers and responsibilities of the Chief Judge and how they are to be exercised. The Court itself characterizes the OCJ as "the administrative headquarters for the Provincial Court ... responsible for engaging with government agencies, individuals and organizations that wish to communicate with the Court."[193] The Chief Judge is expected to "set the direction for the Court" on matters of strategic planning.[194]

Despite the Chief Judge's statutory right and duty to be responsible for the "supervision" of the Court, the Supreme Court of Canada has stated that the Chief "enjoys no particular authority over other judges, save an administrative one" and that "a chief justice is responsible for the expeditious progress of cases through his or her court and may under certain circumstances be obligated to take steps to correct tardiness."[195] These statements support the limited influence of a Chief Judge over the decisional independence afforded every judge, but it is important they not be taken as understating the importance of leadership in any organization, including a court.

In its 2004 report titled "Judicial Independence and Judicial Governance in the Provincial Courts," the Canadian Association of Provincial Court Judges suggested that the role of Chief Judge needs to be clarified and that "one way to do this is through legislation which deals much more specifically with what the Chief Judge is to do and how he or she is to do it – that is to say, a tight, carefully worded and easily operationalized list."[196]

Although administrative leadership and oversight is expected from the OCJ, the specific administrative powers and duties of the Chief Judge are less clear.[197] These powers and duties are often articulated in provincial legislation that grants

192 Provincial Court of British Columbia, *Annual Report 2010-2011 Fiscal Year* (Vancouver: Provincial Court of British Columbia, 2011), at p. 4, online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/annualreport2010-2011.pdf>.
193 Provincial Court of British Columbia, *Annual Report 2010-2011 Fiscal Year* (Vancouver: Provincial Court of British Columbia, 2011), at p. 9, online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/annualreport2010-2011.pdf>.
194 Provincial Court of British Columbia, *Annual Report 2009-2010 Fiscal Year* (Vancouver: Provincial Court of British Columbia, 2010), at p. 44, online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/annualreport2009-2010.pdf>.
195 *Canada (Minister of Citizenship and Immigration) v. Tobiass*, [1997] 3 SCR 391.
196 Peter J. McCormick, *The Canadian Association of Provincial Court Judges, Judicial Independence and Judicial Governance in Provincial Courts* (April 2004), at p. 73, online: Canadian Association of Provincial Court Judges <http://www.judges-juges.ca/en/publications/pubdocs/JudgeBook.pdf>.
197 For a description of various options for the Office of the Chief Judge, see: Peter J. McCormick, *The Canadian Association of Provincial Court Judges, Judicial Independence and Judicial Governance in Provincial Courts* (April 2004), online: Canadian Association of Provincial Court Judges <http://www.judges-juges.ca/en/publications/pubdocs/JudgeBook.pdf>.

jurisdiction to the Court.[198] The contents of these statutes, however, vary greatly across Canada in characterizing the OCJ's role.

In British Columbia, the *Provincial Court Act* sets out the powers and duties of the Chief Judge as follows:

> The chief judge has the power and duty to supervise the judges and justices and, without limiting those powers and duties, may do one or more of the following:
> (a) designate the case or matter, or class of cases or matters, in which a judge or justice is to act;
> (b) designate the court facility where a judge or justice is to act;
> (c) assign a judge or justice to the duties the chief judge considers advisable;
> (d) exercise the other powers and perform other duties prescribed by the Lieutenant Governor in Council.[199]

In addition, the Chief Judge of the BC Provincial Court has specific responsibilities related to the investigation of complaints made against judges.

In other provinces the statutory powers and duties of the Chief Judge differ. The Ontario *Courts of Justice Act* states that the "Chief Justice of the Ontario Court of Justice shall direct and supervise the sittings of the Ontario Court of Justice and the assignment of its judicial duties."[200] In 2006, the *Courts of Justice Act* was amended to clarify that the powers of the Chief Judge include the following specific functions:

1. Determining the sittings of the court.
2. Assigning judges to the sittings.
3. Assigning cases and other judicial duties to individual judges.
4. Determining the sitting schedules and places of sitting for individual judges.
5. Determining the total annual, monthly and weekly workload of individual judges.
6. Preparing trial lists and assigning courtrooms, to the extent necessary to control the determination of who is assigned to hear particular cases.[201]

The Saskatchewan *Provincial Court Act* contains an even longer list of powers and duties for the Chief Judge in that province. In Saskatchewan, the Chief Judge may

a) designate a particular case or matter, or category of cases or matters, with respect to which a particular judge or particular justices of the peace must act;
b) after consultation with the minister, designate court facilities at which the court shall sit;
c) designate particular court facilities and offices that are to be used by particular judges and justices of the peace;
d) designate the time at which judges or justices of the peace must hold court at any place;
e) delegate any functions that the chief judge considers appropriate to an associate chief judge;
f) assign to another judge any duties that, in the opinion of the chief judge, are administrative duties;
g) assign duties to judges and justices of the peace;
h) direct a judge to act in the place and exercise the powers of another judge who is or expects to be absent, during the period of that judges absence;
i) direct and supervise generally the duties and sittings of justices of the peace;

198 The jurisdiction of Provincial Courts is established by statute and they do not exercise the inherent jurisdiction conveyed to federally appointed judges under s. 96 of the Constitution.
199 *Provincial Court Act*, RSBC 1996, c 379, s 11(1).
200 *Courts of Justice Act*, RSO 1990, c C43, s 36(1).
201 *Courts of Justice Act*, RSO 1990, c C43, s 75(1). The legislative authority granted to the Chief Justice in relation to these administrative tasks extends to the authority to determine the venue of a trial in the region over which he or she presides: *R. v. Jeffries*, [2010] OJ No 457, at para 61.

j) exercise any other powers and perform any other duties that are prescribed in the regulations.[202]

As can be seen in the selected provincial acts above, the statutory powers and duties of Provincial Court Chief Judges differ considerably across the provinces.

British Columbia's statutory description of the Chief Judge's powers and duties falls short of the description contained in Ontario and Saskatchewan in several respects. The Ontario legislation, for example, explicitly affirms the Chief's authority to determine the sittings of the court, to determine sitting schedules for individual judges and, importantly, to determine the total annual, monthly and weekly workload of individual judges. These are significant administrative functions that are not clearly articulated, within the powers and duties of the Chief Judge of British Columbia under the present legislation.

Section 78(3) of the Ontario *Courts of Justice Act* also provides that the attorney general may refer questions of court administration for consideration by the Ontario Courts Advisory Council. In my view this provides a potentially useful and transparent means of communication on questions of court administration between the executive and judiciary and should be available in British Columbia. In the BC context, that reference should be to the Chief Judge, unless there is a preferable body, such as the Executive Committee, to receive and consider such a request.

The Saskatchewan legislation also goes further in affirming the powers of the Chief Judge as compared to the BC legislation. Specifically the Saskatchewan legislation provides that the Chief Judge may designate the time at which judges must hold court and may assign administrative duties to judges. These are also important administrative oversight functions that are not presently clear under the BC legislation.

It is important to note that the current Chief Judge did not raise any complaint respecting the current statute; nevertheless, in my mind the need for clarification is clear and compelling. It is both necessary and helpful to clearly identify the roles and responsibilities of the Chief Judge and the OCJ.

13.3.3 Judicial Executive Committee

In British Columbia the administrative work of the Provincial Court is conducted by an Executive Committee and a Management Committee. According to the Provincial Court Annual Report, the Executive Committee, chaired by the Chief Judge and including the three Associate Chief Judges, "provides strategic direction and decision-making for the Court on administrative and management matters as well as issues touching on the administrative independence of the Court."[203] The Management Committee, which consists of the Chief Judge and various administrative judges, "provides advice to the Chief Judge on emerging issues in judicial districts, policy proposals and administrative matters."[204]

In my view, the formal recognition of internal committees to provide strategic direction on the administration of the courts is necessary to enable better management of the Court's business. As articulated by Brian Ostrom, Roger Hanson and Judge Kevin Burke in their essay "Becoming a High Performance Court," one of the key strategies for achieving high court performance is approaching the delivery of justice as a group enterprise. Instead of approaching the judicial administrative function as isolated individuals, they argue that the performance of judges is strengthened when administrative routines and processes support the work of every judge in a coherent fashion. The way to achieve this, they say, is through building consensus among as many judges as possible.[205] To the extent that the

202 *The Provincial Court Act, 1998*, SS 1998, c P-30.11, s 8.
203 Provincial Court of British Columbia, *Annual Report 2010-2011 Fiscal Year* (Vancouver: Provincial Court of British Columbia, 2011), at p. 9, online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/annualreport2010-2011.pdf>.
204 Provincial Court of British Columbia, *Annual Report 2010-2011 Fiscal Year* (Vancouver: Provincial Court of British Columbia, 2011), at p. 9, online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/annualreport2010-2011.pdf>.
205 Brian Ostrom et al. "Becoming a High Performance Court," *The Court Manager* 26:4 at p. 41.

use of administrative committees assists in building consensus on administrative issues, it strengthens the ability of the Court to deliver justice in an efficient and effective manner.

In addition to building consensus and increasing administrative efficiency however, an internal court committee can play another important role—focusing responsibility for making decisions concerning administrative issues on behalf of the Court.

Since administrative independence attaches to the court as an institution, an institutional body should be given the power and responsibility to make such administrative decisions. In this respect the statutory governance of the court does not reflect a clear means to enable the discharge of its collective authority and responsibility over judicial administration.[206]

In order to facilitate the exercise of administrative independence, the Canadian Association of Provincial Court Judges suggests that a "collegial approach" is preferred, where the Chief Judge would act after listening to advisory committees.[207] In my view, this approach has the potential to provide sound support for an individual Chief Judge exercising institutionally-held administrative independence.

In British Columbia, the *Provincial Court Act* does not include any provision analogous to that in Ontario, which would mandate the Provincial Court Executive Committee or Management Committee to consider administrative issues put to it or to make recommendations to the BC Attorney General on matters of court administration. This may provide a useful means of ascertaining the Court's views on questions in the future.

13.3.4 Chief Executive Officer for Judicial Administration

As described in the section of this Report on judicial independence, administrative independence requires that judges hold authority over administrative decisions that bear directly and immediately on their judicial function. This means that judges necessarily carry both adjudicative and administrative responsibilities. Judges, however, are not necessarily trained administrators, and their expertise and time may not be best utilized attending to administrative functions. Administrative independence does not require that judges themselves carry out administrative duties, but simply that they maintain authority over administrative decisions that directly affect their judicial functions. That is, judicial administration may be delegated.

The Provincial Court already has a position of Executive Director of Judicial Administration, but it is unclear whether this role, in support of the OCJ, is as well defined as it might be. To the extent that this represents a senior executive role within the governance structure of the Court under the direction of the Chief Judge, it should be considered within the governance provisions of the statute. This is not intended to detract from, or alter, the current statutory role of the ADM Court Services pursuant to s. 41(2) of the *Provincial Court Act*.

I suggest that, as part of the development of a clearer governance structure, the roles and responsibilities of the executive director responsible for judicial administration be more clearly defined.

13.3.5 Management Expertise

Although not all business models are applicable to judicial administration, there are some models and concepts that could be beneficial. It is notable that the Court along with Court Services directly engaged a business process consultant to review the scheduling process and to assist in developing the proposed revised scheduling program. Almost every successful industry and organization in the present century has adopted aspects of modern

206 Peter J. McCormick, *The Canadian Association of Provincial Court Judges, Judicial Independence and Judicial Governance in Provincial Courts* (April 2004), at p. 74, online: Canadian Association of Provincial Court Judges <http://www.judges-juges.ca/en/publications/pubdocs/JudgeBook.pdf>.

207 Peter J. McCormick, *The Canadian Association of Provincial Court Judges, Judicial Independence and Judicial Governance in Provincial Courts* (April 2004), at p. 74, online: Canadian Association of Provincial Court Judges <http://www.judges-juges.ca/en/publications/pubdocs/JudgeBook.pdf>.

business analysis. Although there are distinctions, the parameters of professional efficiency, the use of new technology and the need for management leadership are common to both courts and business.

Although in a different constitutional and administrative context, the Massachusetts Supreme Court offers an example of the improvements that can be made to judicial administration with the use of external advisors with business and technological expertise.[208]

On the basis of the consultations, every justice participant is seeking to apply business analysis to its operations. The Provincial Court has already obtained the advice of business process improvement experts to assist it in improving Court administration. However, in my view, the Provincial Court should be encouraged to continue improving its operations with the input of experts in the fields of business organizations, management and technology. I believe excellent people would be prepared to serve on such a board as a public service to the community.

I have made similar recommendations to add to the managerial input available to the Supreme Court, and it may be that such a board would be of assistance to all three Courts and potentially help with respect to judicial management and court administration.

The courts are high-profile public institutions that matter to the community, and I am confident that expert people with management expertise could be found to be of assistance to one or more of the courts.

13.3.6 Judicial Complement

The question of the proper judicial complement has had a high profile and been a matter of considerable concern for several years. The most obvious feature of the current situation is that virtually every participant is engaged in considerable reform, and these reforms may have a significant effect on the question of allocation of resources within the system, even apart from any question of increasing resources. In almost every respect, therefore, this question now faces an entirely different factual and policy context.

In 2010, the Provincial Court issued a report titled "Justice Delayed", addressing the advisability of increasing the complement of judges from 126.3[209] to what it was in 2005, 143.65 judges.[210] The Court used the 2005 number of judges as a baseline for its request because "with that number of judges the Court in 2005 was able to keep pace with the volume of new cases."[211] In addition to recommending that the 2005 level of judges be restored, however, the Court "also recommends that a determination be made as to the necessary level of the Court's judicial complement, and that this complement be allocated to the Court", suggesting that more work needs to be done to derive a more fully supported estimate of the number of judges required.[212]

During my consultations, several other groups also recommended that the judicial complement be increased. For example, the BC Civil Liberties Association strongly recommended that the government "continue to increase the complement of provincial judges to match the level required to reduce the current backlog and restore public

208 Massachusetts Supreme Judicial Court, *Striving for Excellence in Judicial Administration* (February 2008), online: Massachusetts Court System <http://www.mass.gov/courts/sjc-report-feb-08.pdf>.
209 Numbers are provided as FTEs or "full-time equivalents". The majority of judges work full-time but some work part-time as part of the Provincial Court Senior Judge Program.
210 Provincial Court of British Columbia, Court Report, *Justice Delayed: A Report of the Provincial Court of British Columbia Concerning Judicial Resources* (14 September 2010), at p. 3, online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/Justice_Delayed_-_A_Report_of_the_Provincial_Court_of_British_Columbia_Concerning_Judicial_Resource.pdf>.
211 Provincial Court of British Columbia, Court Report, *Justice Delayed: A Report of the Provincial Court of British Columbia Concerning Judicial Resources* (14 September 2010), at p. 8, online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/Justice_Delayed_-_A_Report_of_the_Provincial_Court_of_British_Columbia_Concerning_Judicial_Resource.pdf>.
212 Provincial Court of British Columbia, Court Report, *Justice Delayed: A Report of the Provincial Court of British Columbia Concerning Judicial Resources* (14 September 2010), at p. 4, online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/Justice_Delayed_-_A_Report_of_the_Provincial_Court_of_British_Columbia_Concerning_Judicial_Resource.pdf>.

confidence" and accepted the BC Provincial Court's articulation of what that number of judges should be.[213] Similarly, the Canadian Bar Association made a forceful and well- considered submission that there was a broad public interest in providing greater certainty and reducing the potential for confusion or friction and that these goals would be better achieved with a definite complement.[214]

Following the BC Provincial Court's "Justice Delayed Report," the judicial complement was marginally increased from 126.3 in September 2010 to 128 as of September 2011.[215] As of July 31, 2012, the complement fell slightly to 126.80.[216]

I agree with the BC Provincial Court's recommendation that a determination ought to be made as to the necessary level of the Court's judicial complement and that this complement be allocated to the Court. I also agree with the CBA and the BC Civil Liberties Association that the judicial complement should be a number sufficient to address backlogs in the court system and to ensure public confidence.

However, I do not agree that the number of judges present in 2005 represents the necessary judicial complement level or that this number should be used as a baseline for calculations. Rather, in my view the analysis needs to accommodate the recently received information respecting the downward trend in cases and the many shifting processes being put in place by the Court and the other justice participants.

It is apparent from the decline in cases that, should that trend continue, the Court has sufficient resources to reduce the backlog and to eventually be able to set matters down for trial in an acceptable time. A similar process has in fact occurred in the Supreme Court, as a result of declining case volumes and without additional judges, although the increasing demands of mega trials are uncertain and growing.[217]

In determining what the appropriate judicial complement level ought to be, it seems that one should consider several basic factors:

- Whether the existing complement of judges are being utilized to their full capacity,
- Trends in judicial workload (including predicable increases in workload flowing from trends in policing or legislative policy), and
- Regional and special needs for judicial capacity.

These are factors that, in my view, are required to support a reasoned assessment of how many judges are required. They should be considered before any change to the existing judicial complement is made.

I understand that the overall utilization rate of judges based on judicial sitting days is approximately 90%. This means that judges sit in court for at least some time on 90% of the days that they are scheduled to do so. The gap I understand is due to days on which the entire caseload has collapsed.

In consultation with members of the Bar, however, I was told that although judges sit on their scheduled days, such sittings are too often limited to the morning session with many courtrooms empty for substantial parts of the day. This raises the importance of measuring actual sitting hours as the principal factor in judicial utilization.

The primary measurement of judicial utilization should be based, in my view, on actual judicial sitting hours. I understand that the target for actual sitting hours per day is four and a half.

An inadequate matching of case demand with judicial capacity has the significant potential for under-utilization. I understand that elsewhere in

213 British Columbia Civil Liberties Association, *Justice Denied: The causes of BC's criminal justice system crisis* (2012), at p. 25, online: British Columbia Civil Liberties Association <http://bccla.org/wp-content/uploads/2012/05/20120401-Justice-Denied-report1.pdf>.
214 *Justice In Time*, Canadian Bar Association Submission (6 June 2012).
215 Provincial Court of British Columbia, Court Report, *Justice Delayed: Update* (as at September 11, 2011), at p. 1, online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/Justice%20Delayed%20-%20Update%20September%202011.pdf>.
216 Provincial Court of British Columbia, Court Report, *Provincial Court Complement* (30 June 2012), at p. 1, online: Provincial Court of British Columbia: <http://www.provincialcourt.bc.ca/downloads/pdf/Provincial%20Court%20Judge%20Complement%20Requirements.pdf>
217 See: Supreme Court of British Columbia, Supreme Court Annual Reports, 2000–2011, online: Courts of British Columbia: <http://www.courts.gov.bc.ca/supreme_court/about_the_supreme_court/annual_reports/index.aspx>.

Canada actual judicial sitting hours have averaged as low as two hours per day.

In Newfoundland and Labrador, Chief Judge Reid and others sitting on a "Task Force on Criminal Justice Efficiencies" reported in 2008 on judicial sitting hours in that province. The report concluded that:

> Throughout 2006 and 2007, the sitting time of the St. John's Court is on average 40% below the [4.5 hour] standard set by Ontario and British Columbia. This suggests that with a system that better utilizes judicial resources, significant improvements can be made in trial times at minimal cost.[218]

Given that other Provincial Courts are admittedly falling short of the standard four and a half hours sitting per day, it is necessary to assess whether British Columbia's Provincial Court faces any similar challenge. Although BC Provincial Court judges may sit on 90% of available days, if they are not sitting for a full four and a half-hour day then the existing complement of judges may not be utilized to their full capacity, representing a significant mismatch in demand and judicial resources. This is an important factor that needs to be assessed by the province and the judiciary.

Trends in the workload of judges ought also to be considered in determining the necessary judicial complement. The BC Provincial Court has articulated the 2005 level of judges as a baseline and target because in 2005 they were able to keep pace with new cases. However, if the number of new cases has decreased, then fewer judges may be required.

Based on data from the MAG, crime has decreased since 2005, and this may have contributed to the recent reduction in the number of new criminal cases. For example, in 2005/06 the Provincial Court received 106,363 new criminal cases, and in 2011/12 it received only 91,389 new criminal cases (a decrease of about 14%).[219] This is a significant decrease in overall workload considering that three-quarters of the Provincial Court's work involves adult criminal prosecutions.[220]

Further analysis is required since the variation may be largely explained by the dramatic reduction in impaired driving charges. However, based on the new data, even though there are fewer judges now than in 2005, there are actually more judges per new criminal case than in 2005. An assessment of the workload of Provincial Court judges in terms of the number of new cases should also be considered as part of a determination of the necessary judicial complement. This may require input from policing and corrections agencies as well.

The forecasting of trends may also benefit from information available from other participants. LSS carries out a regular forecast of its cases. Since it administers the funding of a significant majority of violent crime charges in the province, its forecasts can and should be referenced in predicting volumes of new cases.

A third factor to be considered is whether any part of the judicial workload will be delegated to judicial justices or other professional staff. In this Review, delegation of preliminary inquiries to judicial justices is recommended. Therefore the amount of saved judicial time achieved needs to be accounted for in any agreement on judicial complement.

A submission from the Native Courtworker and Counselling Association of BC similarly suggests that other court staff could complete certain tasks currently performed by judges. Specifically, this organization suggests that simple adjournments could be completed at the Registry desk, with the

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218 Newfoundland and Labrador, *Report of the Task force on Criminal Justice Efficiencies* (February 2008), at p. 18, online: Newfoundland and Labrador Ministry of Justice <http://www.justice.gov.nl.ca/just/publications/report_on_criminal_justice_efficiencies.pdf>.

219 See discussion in Section 3.6 of this Report.

220 Provincial Court of British Columbia, Court Report, *Justice Delayed: A Report of the Provincial Court of British Columbia Concerning Judicial Resources* (14 September 2010), at p. 38, online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/Justice_Delayed_-_A_Report_of_the_Provincial_Court_of_British_Columbia_Concerning_Judicial_Resource.pdf>.

option of being sent to a courtroom when necessary.[221] In another submission, the LSS suggests that judicial workload could be reduced by "addressing judicial case management to reduce the number of purely administrative appearances."[222] Since the Court Scheduling Project anticipates a significant reduction in administrative appearances in court, this too will need to be taken into account. These are factors that I believe should be carefully considered in determining the level of judicial workload that must be addressed by judges and therefore the number of judges that are required.

I note that the Court has, in the past, reduced the workload of judges by transferring work to other court staff. For example, the Court reports that in 2010 it implemented a number of reforms including "the transfer of the equivalent of 5.5 judge years of workload to JCMs, lawyers and mediators."[223]

To summarize, I agree that the government and judiciary must work together to determine the level of judicial complement necessary to meet the goals of the justice system, including the timely delivery of justice and maintaining public confidence in the administration of justice. However, I do not agree that the 2005 complement level necessarily represents the appropriate judicial complement for 2012 and beyond. In determining what the appropriate judicial complement level ought to be, several factors require consideration: whether the existing complement of judges is being fully utilized; whether the judicial workload has increased or decreased; and whether any of this workload can be delegated to others or otherwise reduced.

In the context of limited government resources, a prudent approach to determining the judicial complement should first include an assessment of the factors articulated above and I recommend that the MAG work closely with the judiciary in doing so.

In my view, however, a means must be found to remove uncertainty around the question of judicial complement. That uncertainty is corrosive of relationships and renders the Chief Judge's administrative role difficult to fulfill. It also focuses everyone's attention on judicial capacity and away from means to improve performance based on existing resources.

In this regard, the Provincial Court has stated that "the current uncertainty regarding the size of the complement and the delay in filling positions has undermined the Court's ability to effectively use and allocate its resources throughout the province."[224] In this Report, I have recommended that the courts, as well as other institutions within the justice system, engage in strategic and co-ordinated planning. This involves planning to maximize the effective use of personnel resources. To do so, I conclude that the filling of judicial vacancies within a pre-determined complement should be done in a timely way.

However, in order for the application of judicial resources to remain dynamic and responsive to trends in the justice system, the pre-determined complement ought to be reassessed on a regular basis (for example, every three to five years). This will require taking into account the factors articulated above. I note that the Court has also expressed the view that delay and backlog should continue to be monitored and that the judicial complement be adjusted accordingly, after sufficient notice to the Court.[225]

The Provincial Court has suggested that in order to bring about an aggressive reduction in the backlog

221 Native Courtworker and Counselling Association of BC Submission (27 April 2012) at p. 6.
222 Legal Services Society, "Making Justice Work : Improving Access and Outcomes for British Columbians," *Report to the Minister of Justice and Attorney General The Honourable Shirley Bond* (1 July 2012), [unpublished] at p. 15.
223 Provincial Court of British Columbia, Court Report, *Justice Delayed: A Report of the Provincial Court of British Columbia Concerning Judicial Resources* (14 September 2010), at p. 3, online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/Justice_Delayed_-_A_Report_of_the_Provincial_Court_of_British_Columbia_Concerning_Judicial_Resource.pdf>.
224 Provincial Court of British Columbia, Court Report, *Justice Delayed: A Report of the Provincial Court of British Columbia Concerning Judicial Resources* (14 September 2010), at p. 4, online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/Justice_Delayed_-_A_Report_of_the_Provincial_Court_of_British_Columbia_Concerning_Judicial_Resource.pdf>.
225 Provincial Court of British Columbia, Court Report, *Justice Delayed: A Report of the Provincial Court of British Columbia Concerning Judicial Resources* (14 September 2010), at p. 39, online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/Justice_Delayed_-_A_Report_of_the_Provincial_Court_of_British_Columbia_Concerning_Judicial_Resource.pdf>.

of cases and to keep pace with the work in the system, approximately 18 new judicial appointments should be made. This would return the court to the complement it enjoyed in 2005. In my view, the evidence respecting judicial utilization and the recent declines in caseload does not support a general increase in judicial complement of this magnitude.

The proposals made in this Review and by the Court and justice participants will have implications for judicial complement that should be addressed. In particular, I agree with the Court's suggestion that the appointment of five judges would add to the immediate capacity and enable an aggressive reduction of the case backload. There may also be particular regional needs for appointments.

13.3.7 Performance Measurement and Reporting

The Provincial Court pioneered the establishment of performance measures in 2005. These performance measures have not been updated, nor do they appear to have formed a central role in planning or management of the Court.

In order to become a high performance court, Ostrom, Hanson and Burke suggest that judges need to share the results of their work and get feedback on it. They say:

> Judges need regular systematic feedback if they are to get better at their craft. Courts need regular and systematic feedback if the court as a whole is to improve performance .... Because customer satisfaction is a focal point of performance, the sharing of performance results among judges, managers, staff members and the public is a sign of respect.[226]

Throughout this Report I have emphasized the importance of transparency and accountability in management of the justice system. These characteristics are important not only in achieving better results in terms of efficiency and effectiveness but also in building public confidence in our system of justice. As such, I agree that performance measurement and reporting, in a transparent manner, is as important for judges as it is for other institutions in the criminal justice system. Indeed, as the Supreme Court of Canada has stated, the important role that the courts play in our democratic society demands that their operations be open to public scrutiny.[227]

There are many approaches to judicial performance measurement and reporting in other jurisdictions, in Canada and around the world. Most methods use systematic data collection and reporting by some central agency (whether independent or a part of government). For example, the Council of Europe has established a Commission on the Efficiency of Justice with the mandate of collecting data and evaluating the judicial systems of all Council of Europe members. This involves reporting on quality indicators of the court system, including for some countries the "productivity of judges and court staff."[228] In Europe, performance targets are generally expressed and evaluated at the court level and, in some countries, at the level of individual judges also.[229] (I note, however that a Protocol Agreement Between the Provincial Court Judiciary and the Court Services Branch related to the Confidentiality of Judicial Data, signed in 1999, restricts the use of some data related to the performance of individual judges.)

In the United Kingdom, the Ministry of Justice issues an annual Judicial and Court Statistics Report, which provides significant detail on the performance of the UK justice system.[230] For example, this Report states the

226 Brian Ostrom et al, "Becoming a High Performance Court", *The Court Manager* 26:4 at p. 44.
227 *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326.
228 European Commission for the Efficiency of Justice, "European Judicial Systems, Edition 2010 (2008 Data): Efficiency and Quality of Justice," at p. 99.
229 European Commission for the Efficiency of Justice, "European Judicial Systems, Edition 2010 (2008 Data): Efficiency and Quality of Justice," at p. 100.
230 For an example, see: UK Ministry of Justice, *UK Judicial and Court Statistics 2011* (28 June 2012), online: UK Ministry of Justice <http://www.justice.gov.uk/downloads/statistics/courts-and-sentencing/jcs-2011/judicial-court-stats-2011.pdf>.

number of days each judge sits in court and chambers per year, identified by level of court, and the number of trials disposed of.[231] It also states the number of days required to complete a criminal case counting from the date of the offence, which in the UK Magistrates Court, was only 144 days on average in 2011 (about five months).[232] Even this time has come under criticism in the recent White Paper already discussed.

The Report also provides detailed information on the average number of hearings per defendant (1.78 in 2011).[233] In my view, the detailed reporting of court statistics in the United Kingdom offers an excellent example of transparency and accountability for justice system performance. The public has easy access to information on how well the justice system is functioning or not, where improvements are possible and what reforms are planned.

Similarly, in Massachusetts, the Court has reported a series of standard time-frames for every type of case in every trial court, in order to focus the court's efforts on timely case management. These time standards, based on case type and complexity, offer objective benchmarks against which the court's performance can be held to account.[234] The Massachusetts Court has publicly expressed support for the old adage "what gets measured gets done" and its performance against metrics such as case clearance rate, time to disposition, age of pending cases and trial date certainty are reviewed and reported on annually (quarterly results are also posted on the Court's website).[235]

In British Columbia, the Ministry of Justice issues an Annual Service Plan Report which compares the actual results to the expected results identified in the Ministry's Annual "Service Plans."[236] In addition, the BC Provincial Court issues its own Annual Report. These reports, however, do not offer consistent and detailed metrics of court performance each year. They are informative but could be more so. For example, these reports do not provide (or do not consistently provide) information on the average number of appearances, the average judicial sitting days and hours, time to disposition nor, importantly, information on whether there are standard targets for such metrics against which the Court's performance is measured. The annual reports do provide some information, but without consistent and comparable measurements from year to year, it may be difficult for the public to build an informed opinion on how the Court's performance has progressed over time.

I therefore recommend that the Ministry of Justice, together with the Judiciary, establish a list of performance metrics for the Court that can be measured and reported on annually. The Ontario *Courts of Justice Act* includes a provision requiring the Attorney General, in consultation with the Chief Justices, to issue an annual report on the administration of courts in that province within six months of every fiscal year-end.[237] The key to effective and transparent accounting is that the metrics provide detailed information on court functions, are made known to the public and are consistently reported on from year to year.

13.3.8 Term of Office for the Chief Judge

The Chief Judge serves a term of five years. There is no fixed term for the office of Chief Justices of the Supreme Court or of the Court of Appeal.

In my view there is good sense in having a term of office, but the term of five years should be revisited.

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231 UK Ministry of Justice, *UK Judicial and Court Statistics 2011* (28 June 2012), at pp. 76-77, online: UK Ministry of Justice <http://www.justice.gov.uk/downloads/statistics/courts-and-sentencing/jcs-2011/judicial-court-stats-2011.pdf>.
232 UK Ministry of Justice, *UK Judicial and Court Statistics 2011* (28 June 2012), at p. 36, online: UK Ministry of Justice <http://www.justice.gov.uk/downloads/statistics/courts-and-sentencing/jcs-2011/judicial-court-stats-2011.pdf>.
233 UK Ministry of Justice, *UK Judicial and Court Statistics 2011* (28 June 2012), at p. 37, online: UK Ministry of Justice <http://www.justice.gov.uk/downloads/statistics/courts-and-sentencing/jcs-2011/judicial-court-stats-2011.pdf>.
234 Massachusetts Supreme Judicial Court, *Striving for Excellence in Judicial Administration* (February 2008), at p. 5, online: Massachusetts Court System <http://www.mass.gov/courts/sjc-report-feb-08.pdf>.
235 Massachusetts Supreme Judicial Court, *Striving for Excellence in Judicial Administration* (February 2008), at pp. 5–6, online: Massachusetts Court System <http://www.mass.gov/courts/sjc-report-feb-08.pdf>.
236 For an example Ministry of Attorney General Annual Service Plan Report, see: www.bcbudget.gov.bc.ca/Annual_Reports/2010_2011/pdf/ag.pdf.
237 *Courts of Justice Act*, RSO 1990, c 43, s 79.3.

I observe that recent experience suggests that this time is simply inadequate for a Chief Judge to carry out a reform initiative of any significance given the time frames required for the development, consultation and rollout of such reforms.

For example, the current reform program might not be completely implemented during the term of the current Chief Judge.

In my view a term of office of seven years would be appropriate.

Recommendations: In consultation with the Provincial Court, the Provincial Court Act should be amended to:

- **Clarify and affirm the role, powers and duties of the Chief Judge and that the term of office to seven years;**
- **Recognize and clarify the role of the Executive Committee and the Management Committee of the Provincial Court;**
- **Provide for a specific judicial complement, subject to review every three to five years;**
- **Permit the Attorney General to refer questions concerning judicial administration to the Court; and**
- **Provide for a professional judicial administration officer with a defined role and responsibility.**

Recommendation: The Court establish a voluntary Advisory Committee on Judicial Administration, including people with expertise in private and public management.

14. CRIMINAL JUSTICE BRANCH

The approval of charges in British Columbia requires the approval of a prosecutor operating within the Charge Assessment Guidelines of the Branch.[238] The prosecution service and individual prosecutors possess both individual and institutional independence. The prosecutor's core independence preserves his or her discretion in relation to charging decisions—which is the decision to approve a charge, to refuse a charge, to enter a stay or to accept a guilty plea.[239] As already noted, the service has two statutory guarantors of independence: independence from direction as to a particular decision and independence with respect to administration and policy. Although a Deputy or Attorney General may direct the service as to conduct of a specific case or administration or policy, a direction in relation to a specific case must be gazetted. The prosecution service can require a policy direction to be gazetted.[240]

The Ministry commissioned a separate and independent review of the charge approval process by Gary McCuaig, QC (Schedule 11). That review concluded that no change should be made to the authority of the prosecution service to approve charges in British Columbia.

It is clear that in its institutional life the Branch regards its independence as central to its identity as a prosecution service and to its value within the justice system. This section addresses whether independence outside of core prosecutorial discretion should be clarified or amended, to better facilitate the system-wide goals that need to be pursued.

14.1 CONTEXT

The prosecution service employs some 450 lawyers and generally oversees the prosecution of all criminal charges in British Columbia, save for federal prosecutions which are carried out by the Federal Prosecution service of Canada.[241]

The prosecution service operates under the *Crown counsel Act*, which provides explicitly for independence in decision-making and policy.[242]

As already noted, the prosecution service has identified a number of initiatives that it has determined to carry out in response to the concerns raised by the *Green Paper*. The list of 15 measures is a very impressive response to virtually every concern raised during the review (see Schedule 6). Some of the more important of these initiatives include:

- Working with the Provincial Court of British Columbia and the Court Services Branch (Ministry of Justice) to redesign the scheduling of criminal cases in high volume locations to optimize judicial and prosecution resources, decrease delay to trial, and streamline the process;
- Crown "file ownership" of prosecution files expanded to reduce duplication of effort, achieve continuity of conduct and facilitate proactive case management;
- Front-end Crown counsel disposition teams established where feasible, with increased flexibility for early resolution of prosecution files;
- A province-wide Criminal Justice Branch tracking system with standardized timelines and other

238 See: British Columbia Ministry of Attorney General, Criminal Justice Branch, CHA 1, "Charge Assessment Guidelines", *Crown Counsel Policy Manual* (9 March 2011), online: British Columbia Ministry of Justice <http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CHA1-ChargeAssessmentGuidelines-2Oct2009.pdf>.
239 *Krieger v. Law Society of Alberta*, [2002] SCC 65, at para 46. For a full discussion, see: M. Joyce DeWitt-Van Oosten, QC, then Deputy Director, Prosecution Support, Criminal Appeals and Special Prosecutions, Criminal Justice Branch British Columbia, "Balancing Independence with Accountability: A Legal Framework for the exercise of Prosecutorial Discretion in British Columbia (Revised and Updated July 2011) [unpublished]. See also *British Columbia (Attorney General) v. Davies*, [2008] BCSC 817, aff'd 2009 BCCA 337.
240 *Crown Counsel Act*, RSBC 1999, c 87 s 6.
241 For further information, see the Public Prosecution Service of Canada website, <http://www.ppsc-sppc.gc.ca/eng/index.html>.
242 *Crown Counsel Act*, RSBC 1996, c 87.

quality control measures institutionalized in the Branch, to ensure file completeness for purposes of charge assessment, disclosure compliance, witness availability and trial readiness;
- Enhancing use of alternative measures across the province, including a risk information tool where available, and other approaches to ensure the most effective model for appropriate referrals to non-court options;
- A Major Case Management Model implemented with a project-management approach for the efficient and effective conduct of the Branch's largest, high profile cases;
- Police liaison officers embedded within Crown offices to enhance communication and training with police on charge assessment and case-management issues.

It is my view that this list is both comprehensive and appropriate. The only question remaining is whether the achievement of these goals, or the other work required, is hampered by any structural impediments in the relationship between the Criminal Justice Branch and the rest of the system.

14.2 CONSULTATIONS

A roundtable consultation was held on the subject of the Prosecution–Police interface. At that table it was generally agreed that, in the larger prosecutions, there was excellent advice and alignment by prosecutors. For the regular and less serious criminal cases, there was the understandable challenge of effectively communicating police strategies and goals to prosecutors.

Concern over the isolation of the prosecution service from the strategies of the police or the Ministry was a recurrent theme during consultations. This concern surfaced in discussions around prosecution advice and certain decisions made about stays of proceedings in cases police felt significant to strategic policing objectives. The prosecution service has now agreed to explore having liaison officers embedded within prosecution offices to enhance communication and to assist in training officers on charge-assessment and case-management issues. Concern was expressed in consultations that Ministry leadership was deterred from having an effective senior relationship with the prosecution service because of a broad interpretation of the independence reflected in the statute.

The Memorandum of Agreement between the prosecution office and police forces addressing disclosure issues was revised and updated in 2011. The general sense was that frustration around disclosure obligations was lessening.

The list of initiatives already referred to demonstrates that the leadership of the prosecution service has listened to these concerns and is determined to work towards facilitating system-wide goals and performance improvements—subject to the necessary independence of prosecutors in relation to individual cases. The statutory structures of independence is not traditional and was adopted as part of the reform process leading to Stephen Owen's report on the prosecution service in 1990.[243]

I met with Gary McCuaig several times to understand the process he undertook to consider the question of charge approval. I also discussed the issue with both police officers and prosecutors.

14.3 ANALYSIS AND RECOMMENDATIONS

The guarantee of independence in exercising the core prosecutorial discretion in relation to particular offences has in my opinion proven to be a safeguard against ill-advised or potentially abusive charges. I agree with the observation made repeatedly by prosecutors in my consultations that one of the most important duties they must fulfill is to refuse to approve charges recommended by police officers where the charge fails to meet the charge

243 See: British Columbia, Discretion to Prosecute Inquiry, *Commissioner's Report*, (Vancouver: Queen's Printer, 1990) (Chair: Stephen Owen).

approval standard. My conversations with police officers and prosecutors alike support the existing system. Their different approaches to laying charges requires an independent and disciplined review before charges are approved.

The very high level of stays of proceedings in jurisdictions such as Ontario demonstrates that under different systems many thousands of charges are laid when they cannot be proven. To the extent that members of the public fail to understand this aspect of our system of justice, greater education is required—rather than a change to this important protection against unjustified interference in the liberties of the people of British Columbia. From an efficiency and systems perspective, it makes little sense to give charge approval responsibility to police when a prosecutor will then have to decide whether to proceed with the charge. That, by necessity, would involve a duplication of effort and a confusing assignment of responsibilities.

Different considerations apply in respect to general policy (unconnected to specific cases) and the administration of the Branch. In my view an integrated approach to policy and administration can and should be taken, and it need not have an intrusive effect on prosecutorial discretion. In order for operational implications to be fully known and understood, the policy process needs to be informed by the Branch. However, the distance created by the statute is unique to British Columbia and may have contributed to an unnecessary distance between the Branch and the rest of the Ministry. Similarly, the Justice and Safety Council needs to be able to influence the policy and administration of the Branch.

One final consideration is that the leadership of the Branch is undergoing a transition and the new leader will have a full reform agenda. Unless there is a compelling case that the Branch's proposals cannot be accomplished within the current structure, I would not recommend any change to the statute as it relates to administration and policy.

Recommendation: The Criminal Justice Branch Reform initiatives at Schedule 6 be implemented.

Recommendation: The charge approval function and responsibility should remain with the prosecution service.

15. THE ROLE OF THE PUBLIC

Many projects are underway to enhance the transparency of the justice system. In this section, I focus on a few ideas that may be complementary to the need for the system to seek improved outcomes and timeliness.

We are heirs to a tradition in which a trial was a solemn public undertaking that took priority over other matters and where it was important that all those involved be engaged publicly, in front of the community. Professor Judith Resnick has tracked the change in courthouse architecture over the past few centuries and observed the decline of the use of courthouses as central civic meeting places.[244]

We all recognize that the criminal justice system's social licence ultimately depends on public confidence in the system. Indeed, securing high levels of public confidence was identified by the Ministry of the Attorney General in 2005 as the central performance measure goal of the justice system.[245]

Most recently, access to court proceedings has vastly increased through the development of the Web and modern communications. We now have a myriad of law and justice information sources, including world media, cable, video, blogs, special websites, and online audio and video. People can now review transcripts and exhibits and watch oral arguments in the Supreme Court of Canada live on Cable Public Affairs Channel.[246] Our system is in the middle of reconciling these older traditions with the inclusiveness and efficiencies made possible by technology and modern communication systems.

The central importance of public confidence has supported numerous efforts to make the courts and their processes more accessible and better understood. British Columbia has long been a leader in public legal education.[247] Many innovative programs such as the use of Web technology by the Courts make the legal system accessible to the public. For example, in any Provincial Courthouse you can now search criminal court files online without cost. Proceedings are now uniformly recorded by digital recorders and can be listened to by members of the public.

There are many proposals under consideration to make further use of technology. Some of those mentioned in the course of the Review include the use of mobile devices to marshal witnesses and update people interested in the course of a criminal matter. Some suggested the online filing of criminal complaints. Court Services is in the course of developing "virtual court rooms" where everyone appears by video.

Yet it is still commonly observed by members of the public that features of the system are organized around the convenience of lawyers and the judge. Frustration was frequently expressed by police officers who observed that large numbers of officers regularly attend court, only to find their attendance unnecessary. Indeed, Translink estimates that a significant number of their police officers are at any one time waiting to testify in court.

Similarly, members of the public observed that the lack of predictability around when and how long they were required to testify makes the system unfriendly and rigid.

Significant steps have been taken to include victims and the community in a more sensitive and appreciative way. Starting from the time an offence is

244 See: Judith Resnick and Dennis Curtis, *Representing Justice: Invention, Controversy, and Rights in City-States and Democratic Courtrooms* (New Haven: Yale University Press, 2011).
245 Public confidence as a specific performance measure was adopted by the UK government in 2002.
246 I observe the new Supreme Court of the United Kingdom now broadcasts its hearings and the US Supreme Court makes audio recordings of the oral argument available online.
247 The Justice Education Society is a unique British Columbia institution which has influenced thinking and practices around access to legal information and education here and internationally. See: <http://www.justiceeducation.ca/>.

first reported to the police, victim service programs provide emotional support, information, referrals, court support, orientation and practical assistance. In the case of community-based victim programs, programs are available if a victim has not engaged with the criminal justice system or wants to discuss options and services. In a limited but growing number of cases, support is provided to a victim during the court process if the matter goes to court. Financial support or compensation is also available to victims of violent crime through the Crime Victim Assistance Program.

The expanding use of restorative justice programs offers a means outside the traditional court process by which victims can voluntarily seek accountability by the offender through a process that focuses on the future and achieves reconciliation in a fashion chosen by the participants.

But there is also considerable frustration by justice participants with the low results from public confidence surveys. Sincere and extended efforts to engage the public have been made, but too often leaders hear only from people who have a particular grievance or are driven by personal issues.

There also appears to be an underlying fear that engaging the public in a transparent way may lead to misleading results, further criticism and a further loss of confidence.

15.1 FACTUAL CONTEXT

15.1.1 Public Confidence

Public confidence is commonly seen as an indicator of the overall effectiveness of the justice system. This confidence is vital to ensuring the legitimacy of the justice system and encouraging the public's participation in the administration of justice (for example, those lacking confidence in the system are often reluctant to come forward or co-operate as witnesses or litigants).[248] As such, promoting public confidence in the justice system has been described as one of the primary goals of good government.[249]

Canadians are generally more positive than negative when it comes to their level of confidence in the justice system.[250] However, the public has less confidence in the justice system than in most other public institutions such as healthcare or education.[251] British Columbians, in particular, express less confidence in the justice system, on average, than other Canadians.[252] A Public Perceptions Survey conducted by the BC MAG indicates that each year from 2007 to 2009 more than half of survey respondents expressed either "not very much confidence" or "no confidence at all" in the justice system and the courts.[253]

Respondents who had actual experience with the criminal court system were less likely to have a positive view of the court's ability to provide justice

248 Julian V. Roberts, *Report for Public Safety and Emergency Preparedness Canada* (November 2004), at p. 1, online: Public Safety Canada <http://www.publicsafety.gc.ca/res/cor/rep/_fl/2004-05-pub-conf-eng.pdf>.
249 Julian V. Roberts, *Report for Public Safety and Emergency Preparedness Canada* (November 2004), at p. 1, online: Public Safety Canada <http://www.publicsafety.gc.ca/res/cor/rep/_fl/2004-05-pub-conf-eng.pdf>.
250 Julian V. Roberts, *Report for Public Safety and Emergency Preparedness Canada* (November 2004), p. 5, online: Public Safety Canada <http://www.publicsafety.gc.ca/res/cor/rep/_fl/2004-05-pub-conf-eng.pdf>.
251 Julian V. Roberts, *Report for Public Safety and Emergency Preparedness Canada* (November 2004), p. 8, online: Public Safety Canada <http://www.publicsafety.gc.ca/res/cor/rep/_fl/2004-05-pub-conf-eng.pdf>.
252 Neil Boyd, *British Columbia Branch of the Canadian Bar Association, Confidence in the Justice System in British Columbia: The Problem, Consequences and Potential Remedies* (2010), at p.5, online: British Columbia Branch of the Canadian Bar Association <www.cba.org/bc/initiatives/pdf/boyd_report.pdf>. See also: British Columbia Ministry of Attorney General, *2008–2009 Public Perceptions Survey, Executive Summary Report* (September 2008–2009), at p. 16.
253 Ministry of Attorney General, *2008–2009 Public Perceptions Survey, Executive Summary Report* (September 2008–2009), Figure 1, p. 11. In this survey, respondents were asked whether they felt that the criminal courts did a good job in the following areas:
- Providing justice quickly;
- Helping Victims;
- Determining whether the accused person is guilty or not; and
- Ensuring a fair trial for the accused.

Over 40 percent of respondents felt that the criminal courts do a "poor job" on providing justice quickly and helping the victim; 12 to 13 percent of respondents felt that the criminal courts were doing a "good job" and the remainder said that they were doing an "average job." (see: p. 14–15) Over half of respondents perceived the criminal courts as doing an "average job" on determining guilt; roughly a quarter said the criminal courts did a "poor job" and another quarter said they did a "good job."(see: p. 15) About half of respondents said that criminal courts do a "good job" of ensuring a fair trial (see: p. 15).

quickly.[254] How a respondent felt about the criminal justice system overall also appeared to be linked to their perception of delay.[255]

The observations found in the MAG Public Perception Survey are in line with the long-standing view of legal critics that delay in the delivery of justice is one of the greatest potential causes for loss of faith in the justice system.

15.1.2 Transparency and the Role of the Media

While there is a tremendous amount of public legal information about the law, and how people can advance legal issues, there is less information available (or at least not easily accessible) about how the justice system itself functions.

There is certainly some information available. Virtually every part of the justice system produces an annual report that is publicly available, with key statistics about the operation of its area of responsibility. As well, the government has recently made a significant amount of courts-related data available online. Unfortunately annual reports are not bestsellers, and online data can be impenetrable to users who are not familiar with it. Nonetheless, this is a big step forward. In our unscientific online survey (which clearly self-selected for people within the system), we asked how people got their information about the justice system. For 37% of the respondents, media was their only source for justice-related information, while 46% said they used Open Data and Ministry of Justice Data, and 42% reviewed evaluations and other Ministry reports. Annual reports were a source of information for 20% of the respondents.

The Ministry made a significant amount of data available for this Review and provided it in a format that was very straightforward to read and to understand. That information is now available on the Ministry website. Its availability should contribute to greater transparency about what goes on in our justice system.

15.1.2.1 The Role of the Media

There is a widespread perception that the public concern over levels of crime is the product of media attention to high-profile cases. But it should be remembered that although the means have changed, intense public interest in criminal trials is hardly a new phenomenon: in 19th century London court reporters sold daily accounts of murder trials. A 2001 report prepared for the Department of Justice Canada found that "Canadians overwhelmingly reject the notion that public concern over crime rate is the result of media publicity surrounding high-profile cases. Seventy-five percent of Canadians perceive that crime really is worse now than it was in the past."[256]

The same report also registered that television and print news media spokespersons were considered less credible in relation to crime, and solutions to crime, than other sources, such as police chiefs, victims groups and academics.[257]

The Courts have made a number of changes to facilitate the media's work, although no doubt the work is ongoing. The Court's new practice note[258] regarding social media devices in courtrooms is one example of the courts keeping pace with developments in the community.

For a number of years the Supreme Court enjoyed the volunteer services of a retired justice the Hon. Lloyd McKenzie, who served as Information Officer to the Court. There is no similar position at present in British Columbia for any of the Courts. Other parts of the justice system do have their own spokespeople

254 British Columbia Ministry of Attorney General, *2008-2009 Public Perceptions Survey, Executive Summary Report* (September 2008-2009), at p. 1. Over half of British Columbians who responded having contact with the criminal courts said that the criminal court system does a poor job of providing justice quickly, compared to less than 40 percent for respondents who had not had contact with the criminal courts.
255 For example, in 2009, 86.4 percent of respondents who thought that the courts did a good job of providing justice quickly were also confident in the justice system and the courts overall. In comparison, only 16.7 percent of respondents who felt that the criminal courts do a poor job of providing justice quickly expressed confidence in the justice system and the courts. (See: p. 17).
256 Karen Stein, *Public Perception of Crime and Justice in Canada: A Review of Opinion Polls* (Ottawa: DOJ, 2001), at p.7, online: Department of Justice <http://www.justice.gc.ca/eng/pi/rs/rep-rap/2001/rr01_1/rr01_1.pdf>.
257 Karen Stein, *Public Perception of Crime and Justice in Canada: A Review of Opinion Polls* by Karen Stein (Ottawa: DOJ, 2001), at p.13, online: Department of Justice <http://www.justice.gc.ca/eng/pi/rs/rep-rap/2001/rr01_1/rr01_1.pdf>.

who are available to talk to the media and respond to questions. However, it is my observation that generally people in the justice system are very cautious about talking to the media. There are a variety of reasons for this, not least a concern about being misquoted and somehow creating more of an issue than they solve or explain. As well, the growing trend to centralization in government generally means that individuals do not feel free to respond to media questions. While it is clearly important that accurate information be provided to the media and hence to the public, there is also value in having a quick response to an issue while it is still a matter of public concern. A public response need not necessarily be "the answer." It might also be the explanation of a complex problem or simply a discussion of the factors that are being, or were taken, into consideration.

15.2 POLICY CONTEXT

15.2.1 Public Confidence and Timeliness

There is considerable evidence from history and other sources that the public's views of the system are heavily influenced by their view of its timeliness. John Cook in 1641 authored a scathing critique of England's Court system, and the problems of delay featured prominently. Roscoe Pound in a famous address in 1906 looked forward to the time when courts would become "swift and certain agents of justice."[259] As Chief Justice Warren Burger of the United States Supreme Court noted over forty years ago, "a sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people" and things that "could destroy that confidence and do incalculable damage to society" include "that people come to believe that inefficiency and delay will drain even a just judgement of its value."[260]

As well, the informal survey we conducted for this Review found that lack of timeliness was the most frequently identified reason for lack of confidence in the justice system.

15.2.2 Access to Justice Information

In its 2010 report on the Canadian Justice System and the Media, the Canadian Judicial Council quoted Jeremy Bentham when he observed that "Publicity is the very soul of justice" and recognized "the pivotal role journalists play in informing the public about what happens in courtrooms throughout the country".[261]

The Provincial and Supreme Court Records Access Policies also pursued initiatives with a view to enhancing access to justice by the media and the general public.[262] On February 28, 2011, the BC Supreme and Provincial Courts established new records access policies which are publicly available on the Courts' websites.[263] The $6 criminal search fee for Court Services Online was eliminated August 31, 2010.

Prior to the policy directions from the Provincial and Supreme Court on how to provide access to court documents, guidance to the public—found in a variety of materials including circulars, manuals, practice directions and court rules—was incomplete.

The new policies provide clarification and direction for Court staff on access to criminal, family and civil court records, as well as guidelines for access to digital audio recordings and search warrant documents.

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258 The Courts of British Columbia, *Police on Use of Electronic Devices in Courtrooms* (Effective 17 September), online: The Courts of British Columbia <http://www.courts.gov.bc.ca/supreme_court/media/PDF/Policy%20on%20Use%20of%20Electronic%20Devices%20in%20Courtrooms%20-%20FINAL.pdf>.

259 Roscoe Pound, "The Causes of Popular Satisfaction with the Administration of Justice" (1906) 29 ABA Rep, pt I at 395-417, reprinted in *West's Encyclopedia of American Law*, Online: Answers <http://www.answers.com/topic/the-causes-of-popular-dissatisfaction-with-the-administration-of-justice>.

260 Warren E. Burger, Chief Justice of the United States, "What's wrong with the courts: The Chief Justice speaks out", US News & World Report 69:8 (24 August 1970) at p. 68, 71 (address to ABA meeting, 10 August 1970) cited in "Justice Delayed is Justice Denied", online: Wikipedia <http://en.wikipedia.org/wiki/Justice_delayed_is_justice_denied>.

261 Canadian Judicial Council, *The Canadian Justice System and the Media* (April 2010), at p.1, online: Canadian Judicial Council <www.cjc-ccm.gc.ca/cmslib/general/media-2010-E.pdf>.

262 Prepared by Janet Donald from the Court Services Branch on 8 June 2012 in response to concerned expressed by the media through a series of articles on access to court records in 2010.

263 See: <http://www.provincialcourt.bc.ca/news-reports/media-access-policy> and <http://www.courts.gov.bc.ca/supreme_court/media>.

The new policies are consistent with approaches adopted by other Canadian jurisdictions and reflect increased openness, accessibility and individual accountability in the handling of the court record. A number of policy changes were made to ease public access to such things as digital audio recordings, Court Orders and search warrants.

15.2.3 Victim Services

The Ministry of Justice recognizes the importance of service to victims through the Victim Services and Crime Prevention Division within the Community Safety and Crime Prevention Branch (CSCPB).[264] Victim impact statements, particularly in cases involving serious injury or loss of life, have become part of sentencing. These permit the public airing and expression of the consequences on the victim and his or her community. In serious cases, victim impact statements are almost always featured as part of the media coverage, and as a consequence, this important voice for victims is now a regular part of our community discourse.

Despite the significant array of services in British Columbia, Victim Services workers expressed frustration with the limitations of their capacity.

In July 2012, the Office of The Federal Ombudsman for Victims of Crime issued its third special report "Shifting the Conversation," which looks into how the needs of victims of crime can be better met. In particular, the Report made specific recommendations in the areas of information for victims, meaningful participation and tangible supports.[265]

Restorative justice programs also achieve higher victim satisfaction. Research supports the view that victims experience very high levels of satisfaction after a restorative justice process. There is also reason to believe that community satisfaction is also greater when victim and offender are reconciled and practical measures such as restitution are achieved. I expect these results are in part the result of self-selection, since victims must volunteer to participate in a restorative justice program. But that is quite appropriate since those may well be people who would otherwise be less satisfied with the restraints of the traditional court-based system.

Restorative justice lacks a specific set of professional criteria and by its nature may require flexible approaches. Funding for restorative justice programs in the province have been cut-back quite dramatically in recent years, and most programs receive very little provincial funding. They depend on volunteers, municipal funding and grants from other sources.

15.3 CONSULTATIONS

During the course of consultations, the Review received over 150 submissions from institutional stakeholders and the public through its website and other means. The website attracted in excess of 6,000 unique visitors, approximately 150 people filled out the online survey, and approximately 120 meetings with individuals and groups were held. Many people reported to me that they had followed the Chair's blog, and dozens of comments were made during the life of the Review.

Like all such efforts, the members of the public who engaged with the Review had a variety of perspectives, different levels of knowledge and different reasons for becoming involved. There were a significant number of people who contacted the Review to address a particular grievance or to share an adverse experience that shed no light on systemic issues.

We met with representatives of the CSCPB, of the Ministry of Justice and victims services workers working with community organizations. I visited several courthouses and observed hearings and trials.

A number of people noted that in a world dominated by US television, educating the public

264 For further information, see the Victim Services website: British Columbia Ministry of Justice <http://www.pssg.gov.bc.ca/victimservices/index.htm>.

265 Canada, Federal Ombudsman For Victims of Crime, *Shifting the Conversation: Special Report* (Ottawa: OFOVC, 2012), online: Federal Ombudsman For Victims of Crime <http://www.victimsfirst.gc.ca/pdf/ShiftingConversation.pdf>.

about BC's criminal system is becoming increasingly important. There are a number of programs involved in the public school system, including and a Court visiting program which hosts some 21,000 students each year in British Columbia.[266] It was suggested that more education on the legal system be made available to the public as well as taught in school.

The experience of Victim Services workers is that victims and their families not only are concerned with the impact on their lives and a just outcome of the particular charge but also are particularly anxious to see that the system works to reduce the reoccurrence and victimization of others by the same conduct.

One recent example is the creative project developed by Laurel and Michael Middelaer, whose daughter Alexa was killed in 2008 on the roadside by an out-of-control vehicle. They have championed the development of Alexa's Bus, which is a mobile blood testing facility. They seek to honour their daughter's memory by reducing roadside fatalities, by making it far easier for police officers to obtain confirmatory blood alcohol readings in cases of suspected impaired driving.[267]

During my consultations with victims of crime and relatives of such victims, I quickly learned that there is a very wide spectrum of expectations regarding the ways they want and expect the system to treat victims.

Some stated that the judges' acknowledgment of the victim in the courtroom significantly helps victims mitigate the re-victimization feelings they often suffer in the course of a trial. Others stated that a meaningful relationship between the victim and judges requires more than acknowledgment. They hope that a judge's statistical understanding of the crime's context would produce, through the Court's judgement, a positive impact on society. In other words, they want to see change championed by the Court so others do not suffer their same loss. Michael Middelaer strongly desired that the court's goals of offender accountability be aligned with the outcomes being sought for the community.

15.4 ANALYSIS AND RECOMMENDATIONS

15.4.1 Improved Transparency and Accountability

I sympathize with leaders within the system who are frustrated with the difficulty in engaging with the general public. However, if better means can be found to obtain those views, I believe they will improve decisions concerning judicial administration.

Our experience during the Review is that raw statistics and general information concerning the system is of far less interest to people than information that is directly relevant to their experience or an issue that is currently of interest to them.

Obtaining public feedback on the performance of the system will more likely be successful if they are contacted while interacting with the system, such as when they are seeking information from websites, or participating as witnesses, victims or members of the community. As many of these people will be biased by the particular matters that bring them to the website or courthouse, adjustments may need to be made for the occasion and source of the information. Although I make no recommendation in this regard, I observe that the position of Information Officer, once filled by the Hon. Lloyd MacKenzie, appeared to fill a need for explanation and afforded access to improved understanding by the media and the public at a level that did not require or necessarily merit the time and attention of the Chief Justice.

Recommendation: In order to improve transparency of Provincial Court processes, consideration should be given to

- **Providing a Web-based service to remind subscribers of developments and resolutions in particular cases; and**
- **Providing online and courthouse user surveys that focus on service standards and ideas for improvement.**

266 Justice Education Society, *2010-2011 Annual Report* (2011), at p. 2, online: Justice Education Society<http://www.justiceeducation.ca/sites/default/files/2010-2011%20Annual%20Report%20FINAL_0.pdf>.
267 See: Alexa's Bus Website: <http://alexasbus.com>.

15.4.2 Use of Technology

Court scheduling represents an inconvenience in the lives of all concerned and particularly those of victims, witnesses and engaged members of the community.

There is no system in place for the automatic updating or communication of scheduling for individuals by email or texting.

Recommendation: Improved scheduling of witnesses via modern information technology should be considered.

15.4.3 The Relationship with Victims

The fundamental premise of the modern criminal justice system is that by reporting a criminal event the victim surrenders management of the charge to public officers.

> In our system of justice, when a crime is committed against a victim, it is also a crime against our society as a whole. Therefore, prosecutors do not represent individual victims; they perform their function on behalf of the community.[268]

It was not always so. Until the late 1890s the vast majority of criminal cases in England were controlled by private litigants, who directly retained and paid counsel to be prosecutors.

This complete displacement of private interests runs the risk of creating a culture in which the victim is seen as merely a witness and someone so heavily biased that they must be excluded from participating in the process.

Victims and their families have concerns about the reoccurrence of criminal behaviour and the protection of others in the community which offers the system an opportunity to look beyond the treatment and handling of an individual case. Feedback from the victims themselves may also, by facilitating their contribution to public safety through their own insights, raise the levels of satisfaction victims take from the process.

Recommendation: Victims should receive online exit surveys after the resolution of a complaint.

268 British Columbia Ministry of Justice, *Role of Crown Counsel*, online: British Columbia Ministry of Justice <http://www.ag.gov.bc.ca/prosecution-service/BC-prosecution/crown-counsel.htm>.

16. PARTICULAR ISSUES

In the course of the Review, it became apparent that some challenges confronting the system would benefit from a system-wide co-ordinated approach directed at achieving improved outcomes, assuring timely process and applying expertise particular to the individual problems. The most obvious of these are domestic violence, administration of justice, mental health and addiction, First Nations, and restorative justice.

This Section addresses these areas and suggests certain approaches for consideration by the Council.

16.1 DOMESTIC VIOLENCE

There is a beehive of activity around the goal of reducing domestic violence in British Columbia. It has a high priority in the policies of the criminal justice system, in the social goals of the government and in the community. Like for impaired driving, the criminal justice system has processed many thousands of domestice violence cases without apparently having influenced outcomes as much as one would hope. Unlike for impaired driving, no one has yet proposed moving these incidents from the courts to a different administrative or tribunal scheme. It is timely for the criminal justice system to demonstrate its ability to respond in a co-ordinated and effective way to these cases.

The management of domestic violence complaints raises many of the systemic issues raised in the consultations. Furthermore, there is evidence that may be particularly responsive to innovations which would achieve timely trial scheduling.

Women's advocates are calling on the criminal justice system to help facilitate a change in our culture as it relates to domestic violence. They look to criminal sanctions as one means by which people will come to understand that society categorically rejects and condemns domestic violence. They hope this collective denunciation will deter all men from domestic violence, reduce repeated violence and help keep women and their children safe. The criminal justice system, in their view, is a critical social force that will support other measures to help women and their children live their lives free of the coercive and disabling effects of domestic violence.

In the view of most women's advocates, the criminal justice system's management of domestic violence has largely been a failure. Many others share this view but from very different perspectives. Indeed, many defence counsel expressed the view that the system is routinely criminalizing domestic arguments and not helping people enjoy violent-free intimate relationships. While society's goals are to reduce violence and increase safety, there is substantial debate about the best means to achieve these goals.

16.1.1 Factual Context

Understanding domestic violence requires us to look at both self-reported victimization and reported offences. The General Social Survey, 2009, found that in Canada overall the incidence of self-reported domestic violence incidents remained at the same level as reported in 2004, after a drop in 1999.[269]However, the survey also found that the rate of reporting nationally has dropped, from 28% reporting in 2004 to only 22% reporting in 2009.[270]

This doesn't seem entirely consistent with the situation in British Columbia, where yearly domestic

269 Statistics Canada, *Family Violence in Canada: A Statistical Profile* (Ottawa: StatCan, 27 January 2011), s 1, online: Statistics Canada <http://www.statcan.gc.ca/pub/85-224-x/2010000/part-partie1-eng.htm>.
270 Statistics Canada, *Family Violence in Canada: A Statistical Profile* (Ottawa: StatCan, 27 January 2011), s 1, online: Statistics Canada <http://www.statcan.gc.ca/pub/85-224-x/2010000/part-partie1-eng.htm>.

violence charges of adults have increased steadily from about 9,000 in 2002/03 to about 12,000 in each of the last three years.[271] The approval rate, for charges submitted by the police, in every year except 2011/12, is between 98 and 99%. The conviction rate for these offences has averaged 49% over the decade, while the average for non-domestic violence cases has been 70%. However, in domestic violence cases, a significantly higher rate, a difference on average of 11%. As well, stays of proceedings in domestic violence cases are on average 11% higher than non-domestic violence cases.[272]

When we compare cases set for trial with those in which a trial date is never set, we see that in the latter cases there is a higher rate of peace bonds and a lower stay rate—much closer to the rate for non-domestic violence cases. In those cases set for trial, the stay rate for domestic violence cases is higher while the rate of peace bonds is lower. This does tend to confirm the general view that domestic violence trials tend to end in stays more frequently than other cases.

Over the same period, we know that homicides associated with domestic violence have declined. The Coroner's Study on deaths associated with domestic violence provides a useful breakdown.[273] It also points out that approximately 20% of the victims are males, although perhaps half of those are the result of same-sex violence. In an analysis in the United States, increased safety for women has been associated with a decline in opposite-sex homicides with male victims.[274] Thus safety for women can help reduce homicide rates both for male and female victims. The homicide statistics demonstrate that the most accurate descriptor of the overall social problem is intimate partner violence.

It may be that the degree of under-reporting of domestic violence has decreased over the past several decades. It was universally agreed that reporting of domestic violence was shockingly low when it was first studied. There has for a generation been a concerted effort to encourage women to report domestic violence as soon as it occurs. Further, the development of women's support groups, shelters and other support mechanisms has hopefully reduced the barriers to reporting.

Still, there remains a concern that the first report of domestic violence may well not be the first that has occurred in the relationship. Advocates for victims of domestic violence report that only very rarely is the first report the first actual incident. While defence counsel questioned this sense that there is no "first-time offender" in the domestic violence context, it is clear from the early risk assessments performed by corrections that it remains common for women to report only after several acts of violence have occurred.

If indeed reporting has increased, it would appear that less serious cases are being referred for prosecution, since the total numbers have been stable for some time. There appears to be no comparative data over time as to the seriousness of injuries suffered by the complainants.

Other factors such as variability by region, ethnic background, age or socio-economic status may also affect the best strategies to reduce violence and increase safety for victims.

In general terms these cases represent a sizable portion of all cases in the system, similar in size to impaired driving cases. They have remained stable (and indeed increased in number recently) for several years, and whatever is being done currently does not appear to be making enough of a difference in safety outcomes.

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271 Information provided by the Criminal Justice Branch.
272 For the purpose of this Review, we use the Ministry of Justice's tracking of "K" files as the best measure of domestic violence cases. They are not all assault cases but may include other charges related to a domestic assault, or associated with a risk of domestic assault, i.e., weapons charges in a domestic situation.
273 See: British Columbia Ministry of Justice, BC Coroners Service, *Intimate Partner Violence in British Columbia, 2003-2011* (Burnaby: BC Ministry of Justice, 16 April 2012), online: British Columbia Ministry of Justice <http://www.pssg.gov.bc.ca/coroners/publications/docs/stats-domestic-violence.pdf>.
274 See: Silent Witness National Initiative, "Statistics on Domestic Violence", online: Silent Witness National Initiative <http://www.silentwitness.net/sub/violences.htm>.

16.1.2 Policy Context

There are a significant number of initiatives throughout the system in relation to domestic violence.

The province has a cross-agency domestic violence policy in this area: the Violence Against Women in Relationships (VAWIR) Policy. This policy was recently updated and set out the role and responsibilities of each service providers, including police, Crown, Victim Services, Corrections, Court Services and Child Protection Workers. It was developed with participation from the affected Ministries and police forces and provides information and context to how justice and child welfare partners respond to domestic violence cases in British Columbia.

In response to the Representative for Children and Youth report, "Honouring Kaitlynne, Max and Cordon: Making Their Voices Heard Now," the government recently opened a new Provincial Office of Domestic Violence, which is part of the MCFD. It is accountable for ensuring that all government policies, programs and services are delivered in a co-ordinated manner. It is also charged with developing a comprehensive multi-year plan to address domestic violence in the province[275] and has just begun to be fully staffed and operational.

A Minister's Advisory Council on Aboriginal Women was also formed in 2012 to develop strategies that address the particularities of domestic violence in First Nations communities. During the consultations they spoke forcefully of encouraging the use of restorative justice programs that take advantage of community resources and First Nations traditions, to bring about reconciliation and healing in a community with many members recovering from abuse and violence in their past.

The Representative for Children and Youth has issued several reports calling for reforms to improve safety for women and children in the province. In particular the Representative is calling on the system to learn and apply the lessons that should be learned from the tragic deaths of the Lee and Schoenborn children.[276]

In many communities, such as Surrey, there are efforts to address ethnically associated domestic violence in ways suited to particular ethnic communities.

Some restorative justice advocates maintain that intimate partner violence can be successfully addressed through restorative justice programs that respect uncoerced victim choice, require accountability be taken by the offender, and seek reconciliation and rehabilitation of underlying conditions.

Domestic violence policies within the police forces and prosecution service have been in place for some time.[277] It seems quite apparent that these policies have succeeded in increasing the rates of apprehension and detention, as well as the percentage of complaints that proceed to charges.

16.1.3 Consultations

Although all stakeholders on this issue are dissatisfied, they are each dissatisfied in their own way.

Women's advocates are concerned that these cases fail to receive sufficient priority from the system; they suffer disproportionately from delay; women are insufficiently supported to stand by their original complaints of assault; and convictions are too rarely obtained.

Some police officers often report that the law appears at odds with the complex reality of troubled intimate relationships. They feel constrained by policy to detain and charge men, even when it seems most likely their partners will want to resume the relationship and be opposed to criminal sanction, or even when the relationship has been brought to an end. While this restriction on police discretion appears to have worked because it increases the number of cases recommended

275 See: Ministry of Children and Family Development and Ministry of Justice, News Release, 2012CFD0029-000614, "Province invests in new domestic violence office" (5 May 2012), online: Government of British Columbia <http://www2.news.gov.bc.ca/news_releases_2009-2013/2012CFD0029-000614.htm>.

276 For copies of those reports, see: Representative for Children and Youth, British Columbia <http://www.rcybc.ca/content/Publications/Reports.asp>.

277 See: British Columbia Ministry of Attorney General, Criminal Justice Branch, SPO 1, "Spousal Violence", *Crown Counsel Policy Manual* (9 March 2011), online: British Columbia Ministry of Justice <http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/SPO1-SpousalViolence.pdf>.

for charge, many police believe it has failed to produce better outcomes for women and families.

Some prosecutors expressed dissatisfaction with a policy that requires that such cases be taken forward. In practice, if not in theory, the policy is seen as reducing individual prosecutor discretion. Many prosecutors express frustration that critics fail to recognize that the likelihood of conviction almost always depends on the complainant's evidence and that in these cases complainants frequently recant their complaints. Frustration was expressed with the concern that these cases—at least anecdotally—suffer unduly from late stays required by reluctant complainants and low corresponding conviction rates.

The statistics do not bear out these various perceptions of how the system is functioning. The policy seems to have succeeded in producing much higher arrests, much higher charge approvals and comparable overall conviction levels.

I heard repeated criticism by defence counsel regarding the entire treatment of these cases by the system. Some experienced defence counsel stated during consultations that the current policy is driven by outdated social theories, in many cases trivial events are criminalized beyond any reasonable interpretation, and the police are constrained to detain and prosecutors are constrained to charge—when, in other comparable situations, they would be able to exercise their discretion and not do so. It was stated several times that in many cases where men proceed to trial, no woman would have been charged with assault in the same circumstances. Some defence counsel urged upon me the approach taken in Brooklyn, where first-time offenders, in the absence of significant injury to the complainant, are in essence given no criminal sanction and where repeat offenders are ordered to take programs to deal with their underlying social or psychological problems.[278]

These positions are contrary in many ways to the current policy and the positions taken by other key stakeholders. It is important, however, to acknowledge that others within the system do not regard the goal of safety as being defeated purely by delay and have criticisms that should be systematically addressed.

16.1.4 Analysis and Recommendations

The fundamental goal of domestic violence policy is to increase the safety of those vulnerable to domestic violence.

Key stakeholders have forcefully expressed their view that important policy goals are being frustrated by the delays in the system.

The multiplicity of public and community organizations seeking to intervene in domestic violence raises obvious risks of inconsistency, lack of co-ordination and confusion. This has been recognized and the new Provincial Office of Domestic Violence is mandated to address these risks.

There also appear to be clear needs for data that are neutral to the observer and relevant to both the scope of the problem and the success of interventions. Particularly with the multiple approaches being taken to the problem, a sound data approach is important.

For those of us seeking to maintain the relevance of the Courts to such pressing social issues, this is an opportunity in an area of grave concern to everyone. Substantial governmental attention can demonstrate that the court system is able to apply the law consistently in a timely fashion, while addressing stable resolutions that improve the best outcomes for the victim, the community and the offender.

What would successful approaches look like? The IRP has been considered a success because of its timeliness, immediacy of sanctions and forward-looking focus on programs for underlying problems. Discussing possible approaches within the court system on the same themes may prove helpful.

16.1.4.1 Timeliness

It was regularly reported that the window for successful intervention in some domestic violence

278 For further information regarding the Brooklyn Domestic Violence Court, see online: Centre for Court Innovation <http://www.courtinnovation.org/project/brooklyn-domestic-violence-court >.

situations may be measured in days and not weeks or months. The key question is what timeliness is required—not just for resolutions of complaints but for improved outcomes.

A longer response often results in the assailant denying the original circumstances, blaming others for the event, and withdrawing from possible treatment for an underlying substance abuse or anger condition. It may also result in the victim recanting her testimony either because she feels coerced by her economic dependency on the assailant or simply because she does not want criminal sanctions applied to the event. In many cases the victim can indirectly control whether sanctions are possible.

Improving timeliness for these cases could benefit from the examination of charge approval procedures. Since almost 100% are approved under the current policy, the timeliness of the investigation and disclosure may be critical.

16.1.4.2 Diversion

There are deep differences of opinion among stakeholders respecting whether domestic violence cases should be considered suitable for diversion. Existing policy strictly limits the diversion of these cases.

Restorative justice advocates agree that any use of restorative justice principles would require significant training and quality control to address the particular risks and safety concerns associated with the dynamics of domestic violence.

Any change in policy would also require that there be extensive stakeholder engagement. I would encourage such engagement, which should include the broad array of professionals and organizations who have an interest in this policy area.

The different approach offered by restorative justice programs may be particularly appropriate for victims whose fundamental goal is to preserve their families but free them of violence. These approaches may use community resources that are effective for particular ethnic or religious communities and that offer insights into family dynamics.

16.1.4.3 Innovative Sentencing

Innovative sentencing approaches like those used in Alberta for some offenders should be considered. There, the delivery of sentence is deferred for a stated period, during which the accused agrees to take an appropriate program and remain violence-free. After satisfactory performance of the conditions, the court enters an unconditional discharge. Breach of the conditions is treated very seriously.

16.1.4.4 New Role for Victims

This may be an area where the integrity and transparency of the system would be improved by accepting the victim's desire, in appropriate cases, to withdraw her complaint. This would require a significant departure from current criminal justice policy. Although this is an area fraught with challenges—one would need to ensure against coercion and other unacceptable behaviours—the current policy suggests artificially that sometimes victims who don't attend have forgotten the event, and as a result the charge is no longer provable. This may be an area where, in appropriate circumstances, victims have a legitimate right, free of coercive influences, to legitimately influence the course of the proceedings.

16.1.4.5 Data

Tracking the time that passes from the initial reporting of the event to its resolution will help drive true timely justice. Tracking the outcomes for accused persons will assist in learning what works. Ensuring transparency of the data should better educate all British Columbians about the nature of the problem and help us progress towards its reduction.

16.1.4.6 The Council

Improved outcomes are more likely when the skills of police officers, corrections and prosecutors are utilized in co-ordination with community resources. Such a co-ordinated approach would be overseen by the Council. Having a central manager in charge of priorities and resources should improve efficiencies, encourage collaboration and most of

all raise the likelihood of progress towards safer and healthier families.

Recommendation: The new Provincial Office of Domestic Violence, working collaboratively with the Criminal Justice and Public Safety Council, should prepare a plan to reduce domestic violence, including an integrated and cross-sectoral approach that includes an informed role for the victim, diversion if appropriate, and early resolution, timely hearings, innovative sentencing, and transparency in the goals and progress towards achievement.

16.2 ADMINISTRATION OF JUSTICE OFFENCES

The treatment of administration of justice offences should be high on the agenda for investigation, consideration and reform. In the course of the consultations, it became apparent that there is a wide variety of views respecting the goals and outcomes of administration of justice cases.

These offences generally arise during the course of another criminal file and constitute violations of restrictive terms on a person's liberty. They include failure to appear, breach of a condition of release on bail, breach of recognizance and breach of probation.

We know that administration of justice offences have been increasing both in absolute numbers and as a percentage of new criminal cases over the past decade. They have gone from approximately 32% of cases filed at the beginning of the decade to 42% in 2011/12[279].

We also know that the number of offences recommended for prosecution by Corrections for breach of probation has remained relatively constant for the same decade. Accordingly, the increase has come from charges recommended by police.

16.2.1 Factual Context

Administration of justice offences can arise in a variety of circumstances but all concern breach of a restriction on a person's behaviour while in the community, pending trial or completion of their sentence for an offence. The breach can come to the attention of either the police or Corrections in the course of their supervision of an offender in the community.

These charges can relate to the terms of release imposed by police, prosecution or the Court. There are many types of terms, although many are standard when thought applicable. They include keeping the peace and being of good behaviour, abstaining from alcohol, staying outside a particular area of the community, not being in contact with certain people, etc.

We know that there has been a trend to increasing numbers of administration of justice charges. In the past 10 years the total number of these offences has risen. In 2011/12 they represented over 40% of all adult criminal cases in British Columbia. There has also been a substantial increase in the number of people remanded in custody pending their trials as a result of administration of justice offences.

Are more administration of justice offences occurring, or has there simply been an increase in enforcement by the police? There is evidence for both. The increase in time pending trial is generally felt to raise the risk of breach by an accused, since the persons released into the community must comply for a longer time. Police have also identified the enforcement of conditions of release as a proactive strategy to affect offender behaviour—in particular with prolific offenders. The substantial increase in police resources and the general decline in crime levels may also have freed police resources for these strategies. It is unclear whether this trend reflects increased reporting by police. The number of charges laid by Corrections has not increased, which may reflect their different roles or different policies towards the discretion over whether to seek a charge approval.

As the number of recommendations for charges from corrections has remained stable for several years, it would appear clear that there has not been an increase in enforcement by Corrections.

279 British Columbia Ministry of Justice, "Criminal Justice Trends 2011/12" (August 2012) [unpublished], slide 55.

The percentage of charges attributable to specific strategies is unclear, although the large total would appear to exclude prolific offender strategies.

The reports to Crown counsel in relation to these offences are typically very straightforward, as they do not arise from complicated investigations or have multiple witnesses. These cases reportedly occupy very little court time.

The charge approval rates for these offences by the prosecution service are slightly lower than other offences, but are comparable, and have been stable throughout the growth in the caseload.

16.2.2 Policy Context

There is no system-wide policy for what terms are to be sought, what terms will be imposed or what breaches will be enforced. These questions are addressed through the general exercise of professional discretion by police, corrections, prosecutors and the courts.

Efforts to standardize orders have been made in recent years to enhance consistency and efficiency in their processing.

16.2.3 Consultations

What are we seeking to accomplish with these prosecutions, and are we succeeding? These questions were frequently the topics of our consultations with justice participants from across the system. The answers varied dramatically, and there is certainly no system-wide consensus as to what should be done. There was consensus that they deserve separate and expert attention, apart from the underlying offences themselves. This would encourage respect for the system, have a positive role in ensuring safety for the community and seek to have a positive influence on the underlying conditions which may have given rise to the charge or offence.

Many police officers and police leaders assert that the growth in administration of justice offences relates to a policing strategy to focus on offender management. In essence, when police perceive a high risk exists that an accused will commit a further offence, they will proactively employ the restrictions on his or her terms of release, thereby intensively assisting the accused to change his or her behaviour. Failing that, the police can then seek the help of the Court in obtaining compliance and/or incarceration, for the safety of the community.

From the policing perspective, it was regularly reported that prosecutors failed to take the administration of justice offences as seriously as the policing strategy would justify. The same criticism was made by police officers of the treatment of these offences by sentencing judges. The practices that attracted the greatest criticism from the policing perspective were low levels of charge approval; high levels of stays of proceedings; the accumulation by an individual of large numbers of administration of justice offences without resolution during the pendency of the principal criminal offence; and little effect on overall sentencing for individuals who chronically violated the terms of their release into the community.

Prosecutors generally acknowledge that there is a large number of these charges and that there is little or no overall policy governing their handling and disposition. While there is a sincere effort to craft conditions which are tailored to the circumstances of the offence and offender, some prosecutors acknowledged that they lack the expertise to know what is or is not the correct approach.

Both defence and prosecution acknowledged that many people released are certain to breach one or more of their conditions before their trial. There is a mix of frustration and philosophical resignation in the community concerning this fact. As administration of justice offences are very frequently related to less serious substantive offences, there appears to be little enthusiasm for spending a great deal of time or effort on them.

Defence counsel and other veterans within the system regularly questioned whether the terms of release are appropriate in many cases. In particular, it is questioned whether the number and wide variety of terms of release are comprehensible to the people to whom they are intended to apply. Although there has been some standardization of the terms of release for the ease of the court and staff in preparing orders,

that has not translated into more comprehensible orders for many of those affected. Even a casual observation of court proceedings reveals any number of persons for whom the terms and conditions of their release do not appear to be comprehensible. Some of the language, such as "keep the peace and be of good behaviour," is reflected in the Criminal Code but is so general as to be unhelpful and distracting. Some terms of release are seen as impractical: the often-referred-to example is the chronic alcoholic awaiting trial for a minor criminal offence whose terms of release include not drinking alcohol. When everyone expects the terms of release to be breached, according to those concerned, respect for the system is undermined.

Hugh Braker of the Native Courtworker and Counselling Association of British Columbia related the story of an accused he advised who was eventually charged with 16 administration of justice offences for visiting her boyfriend elsewhere in the province, while awaiting trial for her first charge of shoplifting.

Defence counsel expressed their common dilemma: their clients obviously wish to secure their liberty and are willing to accept unrealistic conditions to achieve it.

Some judges, and some police, prosecutors and others were of the opinion that administration of justice offences represent a rejection of the moral authority of the Court to impose restrictions on the liberty of the accused. The Provincial Court has in some locations created a compliance court, with a view to concentrating these offences in one place and enhancing the likelihood of compliance through stricter enforcement. And indeed for a significant percentage of offenders, the administration of justice offence becomes the most serious offence. Many others view the concern for respect for the Court and its orders as misplaced and unhelpful, in that the majority of people affected by these orders have multiple problems in their lives and generally lack respect for authority. On this view, we are elevating our concern for respect in a manner that leads to its opposite: the proliferation of orders that are destined to be breached and the enforcement of which depends on the priority given to investigation and police enforcement.

16.2.4 Analysis and Recommendations

This is a complex problem that requires a system-wide response. It needs to be informed by an evidence-based approach, and the skills of all the justice participants need to be engaged to improve outcomes.

The data do not support some of the concerns raised by police officers. The prosecution service is certainly charging these offences with increasing frequency and obtaining convictions for them. In my view, the frustration expressed by the police is that they do not consider that the system is co-operating with the goal of influencing behaviour through enforcing the terms of release. It is certainly true that little enthusiasm was expressed during the Review by prosecutors or judges for a different approach to these charges.

The data do not support the frequently made criticism concerning levels of charge approvals for administration administration of justice: they have a comparable level of charge approval to other categories of crime.

Although there is a general sense in the legal community that administration of justice offences are frequently resolved as part of the background when the substantive offence is determined, this behaviour doesn't appear to be reflected in lower conviction rates. It may well be reflected in sentencing submissions, but the data maintained don't assist with answering this question. Certainly there are individuals with large numbers of administration of justice offences who remain at large in the community, but there are increasing numbers of people in custody as a result of these charges. There appears to be little data on when or why these different treatments of frequent breaches are occurring.

Prosecutors did not disagree that it is commonplace to accept a plea of guilty for the underlying offence, in return for stays of proceeding relating to the administration of justice offence component.

It may be a fair inference from the treatment of these cases by Crown and judges alike that they do not agree with the proposition that these charges

have an overall effect on the behaviour of offenders. More study would be needed to reach definitive or even reasonable conclusions.

It would also appear difficult to justify the high volume of administration of justice offences—some 38,000 cases in 2011 alone—as all related to prolific offender management. One inference may be that increased policing resources has permitted a closer oversight of the terms of release of those in the community who come to the attention of patrol constables. Coupled with the lengthening periods of time to trial on the underlying offences, it is only natural that there be an increase in administration of justice offences.

Perhaps most importantly we have a much larger prison population serving custodial time because of breaches of the terms of their release. There seems to be very little evidence that this incarceration has improved compliance with court orders. Better approaches to achieving improved outcomes are certainly needed.

This area is ripe for consideration and development of an overall plan for the system. The policy and operational development needs to be performed by the justice participants. Elements of a new approach might include

- Gathering existing system data and/or commissioning research;
- Considering what impact increased timeliness will have on these cases;
- Learning from experience in the field with proactive enforcement of orders;
- Reducing the number of conditions and simplifying terms by interviewing those affected about their understanding of the conditions of their release;
- Considering better ways of engaging defence counsel or other professionals regarding what terms are likely to be successful;
- Developing a pilot program under the direction of the Council which seeks to identify the best strategies to achieve both safety for the community and improved outcomes for offenders;
- Considering whether there are technologies that might be better used to help accused comply, such as email or online systems, GPS trackers etc.
- Educating and training police and prosecutors in the most effective behaviour interventions, with input from corrections.

Recommendation: An administration of justice Offence cross-sectoral working group should be established (under the direction of the Criminal Justice and Public Safety Council) to

- **Better understand the trends and outcomes of administration of justice offences;**
- **Identify best practices for determining the terms of release into the community pending trial, and the best practices in enforcement and supervision of those conditions, with the goal of achieving the best outcomes for the victim, the community and the offender; and**
- **Develop a pilot to test the strategies.**

16.3 MENTAL HEALTH AND ADDICTION

Mental illness and addiction in British Columbia's criminal justice system was identified during the consultations as a significant and systemic issue. It also illustrates the interdependence between the justice system and other government and community services. There are a number of initiatives underway and undergoing evaluation.

16.3.1 Factual Context

A shift from institutionalized care to community-based care has increased police interactions with the mentally ill, simply due to the higher number of people with mental illnesses in the community[280]. This shift, along with the lack of programs and support dedicated to dealing with those suffering

280 Canadian Mental Health Association, *Police and Mental Illness: Increased Interactions* (March 2005), online: Canadian Mental Health Association <http://www.cmha.bc.ca/files/policesheets_all.pdf>.

from mental illnesses, has resulted in estimates that 56% of people in the corrections system suffer from diagnosed substance abuse or some form of mental illness, both serious and less serious. [281] It is not clear how many others are undiagnosed, particularly those who may be suffering from foetal alcohol spectrum disorder. This percent is disproportionate to the occurrence of mental illness in the population at large.

The mentally ill are more likely to be arrested for disturbance, mischief, minor theft and failure to appear in court, than non-ill people.[282] Their illness makes it more difficult to address the factors that bring them into conflict with society and the law. Although minor, these offences take up significant court time. The mentally ill may be less likely to appear in court or be unable to comply with conditions of release and thus contribute to the "churn" which has been observed in our courts. The misunderstanding and confusion that often surrounds people with mental illness may cause people to fear and view them as dangerous, when they may in fact represent no risk to public safety.

Factors contributing to a high number of mentally ill persons in the prison system include a lack of sufficient community support. People with mental illness have a harder time maintaining employment, which leads to difficulties paying rent—many also lose contact with friends and relatives[283]. This lack of community support is one of the reasons why an estimated 35% of the homeless in shelters are mentally ill, and 36% of unsheltered homeless suffer from mental illness[284]. In a survey of Vancouver's homeless, 19% cited mental health as a barrier to finding housing[285]. Another factor is the high rate of substance abuse among the mentally ill. In downtown Vancouver, 47% of homeless in shelters are addicts, and 63% of unsheltered homeless suffer from addiction.[286] Over 50% of homeless people suffering from mental illness have a co-occurring substance abuse addiction. People who are both mentally ill and suffering from an addiction are much harder to treat than either mental illness or addiction alone, and there are not enough programs available to address the growing demand of people with both problems.[287]

To complicate matters further, the medical and social interventions to assist people suffering from schizophrenia will be quite different than those suffering from foetal alcohol syndrome. The cost and delay of obtaining some diagnoses, such as foetal alcohol spectrum disorder, can represent practical barriers to effective intervention.

Individuals with mental health issues are more likely to breach conditions on their being at liberty in the community. This may in part be due to the lack of mental capacity needed to understand and remember new rules and regulations.[288] Although the foundation for system-wide support is in place, it is not used

281 British Columbia Ministry of Public Safety and Solicitor General, *Strategic Plan of BC Corrections*, online: British Columbia Ministry of Justice<http://www.pssg.gov.bc.ca/corrections/pdf/strategic-plan-2010-2013.pdf>
282 Canadian Mental Health Association, *Police and Mental Illness: Increased Interactions* (March 2005), online: Canadian Mental Health Association <http://www.cmha.bc.ca/files/policesheets_all.pdf>.
283 Vancouver Regional Steering Committee on Homelessness, *One Step Forward: Results of the 2011 Metro Vancouver Homeless Count* (28 February 2012) (Chair: Alice Sundberg and Susan Papadionissu), online: Metro Vancouver <http://www.metrovancouver.org/planning/homelessness/ResourcesPage/2011HomelessCountFinalReport28Feb2012-FinalVersion-Tuesday.pdf>.
284 Vancouver Regional Steering Committee on Homelessness, *One Step Forward: Results of the 2011 Metro Vancouver Homeless Count* (28 February 2012) at pp. 26–27 (Chair: Alice Sundberg and Susan Papadionissu), online: Metro Vancouver <http://www.metrovancouver.org/planning/homelessness/ResourcesPage/2011HomelessCountFinalReport28Feb2012-FinalVersion-Tuesday.pdf>.
285 Vancouver Regional Steering Committee on Homelessness, *One Step Forward: Results of the 2011 Metro Vancouver Homeless Count* (28 February 2012) at pp. 37–38 (Chair: Alice Sundberg and Susan Papadionissu), online: Metro Vancouver <http://www.metrovancouver.org/planning/homelessness/ResourcesPage/2011HomelessCountFinalReport28Feb2012-FinalVersion-Tuesday.pdf>.
286 Vancouver Regional Steering Committee on Homelessness, *One Step Forward: Results of the 2011 Metro Vancouver Homeless Count* (28 February 2012) (Chair: Alice Sundberg and Susan Papadionissu), online: Metro Vancouver <http://www.metrovancouver.org/planning/homelessness/ResourcesPage/2011HomelessCountFinalReport28Feb2012-FinalVersion-Tuesday.pdf>.
287 Canadian Mental Health Association, *Police and Mental Illness: Increased Interactions* (March 2005), online: Canadian Mental Health Association <http://www.cmha.bc.ca/files/policesheets_all.pdf>.
288 Information provided to the BC Justice Reform Initiative by the RICHER (Responsive Intersectoral Children's Health, Education and Research) Initiative.

consistently across the system.[289] This decreases the effectiveness of the system as a whole, keeping more people with mental illness in the court system.

The institutional settings and emergency shelters used to aid the mentally ill or addicted are much more expensive than supportive housing. In one program, once mentally ill clients were in housing, the use of police detoxification by program recipients was reduced by 75%, arrests were reduced by 56% and jail admittances were reduced by 68%[290].

More training and communication between police officers and mental health workers could make a big difference in the treatment of individuals with mental illness. It would enable police officers to better handle situations involving the mentally ill and would allow mental health workers to realize that although the patient has a criminal record, the individual may not be violent and should be able to receive treatment[291]. In effect, an individual experiencing a psychotic break would not automatically be arrested. The police officer would have the ability to better understand the situation from a mental health perspective and be able to proceed in a way that both ensures public safety and is beneficial to the individual and the court system.

16.3.2 Policy Context

The Prolific Offender Management Project started in six BC communities in February 2008. This project focuses on the small number of chronic offenders who commit a disproportionate number of crimes. Law enforcement specifically focuses on these chronic offenders, then where appropriate, refers them to specific services to help them address and resolve underlying conditions related to their offending.[292] The project achieved greater collaboration and communication across justice system partners. Police and chronic offenders are communicating more, some offenders have entered into the programs available for them, such as mental health facilities, rehabilitation centres, and housing and job referrals.[293]

In Vancouver, the Downtown Community Court (DCC) was established in 2008 after an extensive planning process. It is a resolution court for summary conviction offences committed in downtown Vancouver, with justice and non-justice services co-located in the court building. Health and social service agencies work together in an integrated approach to manage offenders and address the underlying health and social problems that often lead to crime. Sentences in the community court focus on managing the offender's risk of re-offending and compensating the community for harm caused my the crime. The Court is currently being evaluated.

In Victoria, as a result of judicial leadership, the Victoria Integration Court (VIC) opened in 2010, focusing on accused and offenders with mental illness and homelessness issues.[294] The Court sits once a week, in a courtroom in the Victoria courthouse. Probation staff co-ordinate with health authority staff to provide integrated supervision of offenders with mental health or addiction problems and to provide advice to the court with respect to appropriate conditions of release. The conditions

289 Information provided to the BC Justice Reform Initiative by the RICHER (Responsive Intersectoral Children's Health, Education and Research) Initiative.
290 Information provided to the BC Justice Reform Initiative by the RICHER (Responsive Intersectoral Children's Health, Education and Research) Initiative.
291 Canadian Mental Health Association, *Police and Mental Illness: Increased Interactions* (March 2005), online: Canadian Mental Health Association <http://www.cmha.bc.ca/files/policesheets_all.pdf>.
292 For further information regarding the Prolific Offender Management Project, see: British Columbia Criminal Justice Reform, *Prolific Offender Management Project*, online: British Columbia Criminal Justice Reform <http://www.criminaljusticereform.gov.bc.ca/en/justice_reform_projects/prolific_offender_management/index.html>.
293 British Columbia Criminal Justice Reform, *Prolific Offender Management Project Update* (March 2009) online: Criminal Justice Reform <http://www.criminaljusticereform.gov.bc.ca/en/justice_reform_projects/prolific_offender_management/pdf/POMsNewsletterMar2009.pdf>
294 For further information on the Victoria Integrated Court, see: Provincial Court of British Columbia, *Victoria Integrated Court: Integration of Health, Social and Justice Services in our Community* (28 July 2011), online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/Victoria%20Integrated%20Court%20Report.pdf> and Provincial Court of British Columbia, *Victoria Integrated Court in its Second Year: Continuity and Progress* (26, June 2012), online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/Victoria%20Integrated%20Court%20In%20Its%20Second%20Year.pdf>.

will often include seeking treatment and remaining in contact with support workers, whose aim is to assist with their reintegration into the community. This initiative was implemented with no new resources but was designed to complement the existing integrated health and justice services to this client group.

Individuals with complex histories and conditions would obviously benefit from fully informed community support. These individuals often have many admissions to several different institutions, and there are barriers to sharing information between the medical system, social services and the legal system. There is now a plan to make BC's medical data available to better inform the treatment of chronic offenders, but the obvious privacy and consent issues have not yet been navigated[295].

16.3.3 Consultations

Generally there was a view that we are not doing enough to ensure that people with mental illness do not end up enmeshed in the court system. The Canadian Mental Health Association believes the issue needs the most attention is collaboration between police officers and mental health providers. If this collaboration succeeds, then the other proposals to lessen the incarceration of the mentally ill will also succeed.

For those individuals who do come into contact with the court system, the most promising approach appears to be an integrated triaging of offenders, involving both health and justice personnel[296].

16.3.4 Analysis and Recommendations

The convergence of social services interventions and judicial adjudication of criminal behaviour will require a careful assessment of needs and a determination of where the best skills are located to improve outcomes and to ensure public safety. The proper mix of delivering justice to the community, respecting the victim and reducing the risk from an offence will always be a challenge. The VIC has benefited from the active engagement of the health authority, which would be necessary in other communities. To a degree, the court once again becomes a civic meeting place. Using skilled professionals, the community utilizes the legal system's right to control an individual's behaviour as a way of facilitating that individual's access to services, which is likelier to lead to a safer more fulfilling life.

Recommendation: New approaches such as that taken by the Victoria Integrated Court should be fully evaluated to determine whether they improve outcomes for offenders with mental illness and addictions, so that they can be considered for broader implementation.

16.4 FIRST NATIONS

There was no specific mandate for the Review to inquire into the First Nations dimension of the criminal justice system in British Columbia. Nevertheless, the over-representation of First Nations people among those who are victimized by crime and who are engaged in the system—as accused, as people at liberty in the community subject to restrictions, as incarcerated—is obvious and a concern for everyone.

16.4.1 Consultations

The Review met with a number of First Nations people who expressed the concern that the distinctive needs of First Nations required separate and careful consideration. The Minister's Advisory Council on Aboriginal Women urged me to recommend a review into the distinct needs and opportunities for innovation in criminal justice in First Nations communities. One example cited

295 Rod Mickleburgh, "Plan to Unlock B.C.'s Trove of Medical Data Raises Privacy Concerns," *The Globe and Mail* (18 April 2012) online: The Globe and Mail <http://www.theglobeandmail.com/news/british-columbia/bc-politics/plan-to-unlock-bcs-trove-of-medical-data-raises-privacy-concerns/article2407111/>.

296 British Columbia Street Crime Working Group, *Beyond the Revolving Doors: A New Response to Chronic Offenders* (29 September 2005) (Chair: Elizabeth A L Burgess J), online: British Columbia Justice Review Task Force <http://www.bcjusticereview.org/working_groups/street_crime/scwg_report_09_29_05.pdf>.

was that some First Nations have been more than willing to employ restorative justice approaches to serious offences, in the interests of healing and supporting the entire community to ensure the safety of vulnerable persons.

It was pointed out repeatedly that there are many differences between First Nations communities; what would be successful in one community might not be appropriate for another.

The Prince George Aboriginal Justice Society pointed out that there is a large seasonal urban population of First Nations people who have a two-way relationship with urban and reserve communities, as they pursue education and other opportunities in centres like Prince George. The dramatic growth in the number of First Nations people living in urban communities in BC raises new and different challenges, which both federal and provincial levels of government will need to address.

16.4.2 Analysis and Recommendation

This is an area which is important in any analysis of the performance of the criminal justice system. Nevertheless, it is very complex and any analysis by me would require far more investigation and consideration of the various ongoing initiatives than has been available to the Review. Accordingly, I make no recommendation as to this area of concern.

16.5 RESTORATIVE JUSTICE

Restorative justice is a recommended alternative model for addressing criminal acts, whose proponents believe that it promises cost-effectiveness, low recidivism, and high victim and community engagement and satisfaction. In their experience, it is highly accountable and accepted by offenders and has higher restitution and compliance rates than the conventional system.

British Columbia has long had an interest in restorative justice, with the history of some organizations going back to the early 1980s.

16.5.1 Factual Context

The majority of alternative measures programs in the province, which accept referral from Crown counsel, are run by Corrections Branch staff. They are not true restorative justice programs in the sense that they do not include victim offender reconciliation. However, they do include restorative aspects such as community work service and apology letters. There are also 32 alternative measures programs in First Nations communities funded jointly by the province and the federal government, as part of the Aboriginal Justice Initiative, run by First Nations communities and justice organizations, which accept alternative measures referrals from prosecution services. Although these programs all incorporate some restorative aspects, only a few support victim offender reconciliation interventions.

As well, there are 45 community accountability programs known as CAPs which provide some elements of restorative justice programming. These are volunteer-driven programs that receive minimal support from the province, $5,000 to cover start up costs and then $2,500 a year to support training and ongoing costs. These programs are primarily police diversion programs, and their clients are largely youth, although some accept some referrals of adults.[297] In addition to the small amount of Ministry funding, these community organizations are dependent on other program grants, volunteers, municipal funding and donations.

At this point, most offenders subject to alternative measures are exposed to some elements of a restorative process. However, only a few benefit from rigorous restorative intervention.

16.5.2 Policy Context

Alternative measures are provided for in s. 717(1) of the Criminal Code, which provides that

297 Justice BC, *Restorative Justice*, online: Justice BC <http://www.justicebc.ca/en/cjis/understanding/restorative/index.html>.
298 Community Safety and Crime Prevention Branch (Ministry of Justice) Submission to the BC Justice Reform Initiative (31 May 2012), at p. 1.

the measures must be "(a) … part of a program of alternative measures authorized by the Attorney General" or other authorized person.

Most of the CAPs are not authorized alternative measures programs and thus prosecutors are not able to make referrals to them.

The leadership in the prosecution service has for some time supported the idea of prosecution referral to restorative justice programs, but there are limited opportunities to refer to a fully developed restorative justice program.

There has been some limited use of restorative approaches at sentencing, but this is not frequently used. While all courts take into account ways in which offenders can make amends for their offences, the two First Nation's courts in British Columbia emphasize a restorative approach.

The federal corrections service has funded the limited use of restorative justice in relation to convicted and sentenced offenders, as a means to create greater understanding on the part of the offender of the harm he has caused to the victim. The purpose is also to bring "closure" to the victim, particularly where the victim has not found the formal criminal process to be very satisfying. This process has not been used in adult corrections in British Columbia although there are some examples of its use in the youth justice system.

Police policy with respect to restorative justice varies among the independent municipal forces, although the RCMP has a formal policy to encourage referrals to programs such as restorative justice.

16.5.3 Consultations

Advocates of restorative justice have a great deal of enthusiasm and zeal. They see restorative justice as a very different means of obtaining far better outcomes for victims, offenders and the community than are available through the traditional punitive model of justice.

In the consultations it was made clear that restorative justice advocates encounter widespread misunderstanding concerning what restorative justice programs are. One association stated that they are not the "Hugs for Thugs Society," and emphasized that victims must agree to participate, and that it is difficult and challenging for offenders to go through a restorative justice program. Although it is clear that within the restorative justice community itself there are differences of approach, the definition of restorative justice offered by the CSCPB is helpful:

> "Restorative justice is an approach that provides a new set of tools which complement and can work within all levels of the traditional justice system. By looking at victim and community needs first, restorative justice recognizes that while crime offends society as a whole, crime is primarily an offence against people. Justice therefore involves the victim, the offender, and their communities in the search for outcomes which meet the needs of those who have been harmed and address the underlying causes of the act. This may include restitution, counselling, apology letters and/or community service, but can also invite creative solutions determined by key stakeholders."

The "gold standard" for a restorative justice session is one where the victim and offender both volunteer to meet under the supervision of a trained restorative justice worker. The victim has an opportunity to tell the offender how the offence impacted his or her life. The offender is required to demonstrate acceptance of responsibility but has the opportunity to offer an explanation of the circumstances which led to the crime. Where property losses have occurred, restitution is often an agreed-upon undertaking. There are opportunities to identify opportunities for forgiveness by the victim and restoration of the offender through positive changes in his or her behaviour. The Community Justice Initiatives Association 2010 Annual Report quotes an offender as saying: "It almost makes your

heart stop, when you're forgiven for something you didn't think you should be forgiven for."

The Review received moving submissions from the victims of serious crimes, including family members of murder victims, who identified restorative justice as delivering a greater degree of closure and healing than permitted solely by the traditional sentencing model. restorative justice advocates strongly urged the referral of serious offences to restorative justice programs as complementary and not inconsistent with the goals of criminal justice.

Although restorative justice programs were long associated with youth and property crimes, some programs have been receiving adult criminal referrals for many years, and it is felt by many that equally positive results are available for adult offenders.

Research has been conducted which supports the expansion of the use of restorative justice programs as it concludes that there is a greater degree of acceptance by offenders, a far higher degree of satisfaction by victims, lowered recidivism rates and an increase in public confidence.

Similar methods are used by the Ministry of the Environment in relation to environmental offences.

These are not programs run generally by lawyers, although they have long had the support of some judges, lawyers, prosecutors and defence counsel. Many during consultations expressed their fear that their ethos, because it is very different than the traditional criminal justice model, has limited the use of restorative justice justice by police, prosecutors and the courts. In Abbotsford, it was reported that support from senior police leadership and the opportunity to educate members of the force about the nature and effectiveness of the programs has dramatically raised referrals to restorative justice in the past few years.

16.5.4 Analysis and Recommendations

There appears to be need for both balance and consistent professional controls around the delivery of restorative justice programs.

Given their largely voluntary character and the fact they operate as an alternate model to the traditional criminal justice system, an important question arises: how best to permit these programs to flourish while holding them accountable for results and offering sufficient support to let them achieve continuity, training and experience.

In some senses restorative justice programs are thoroughly outside the criminal justice system; they are, to some degree, revolutionary in their methods, goals and personnel. At a different level, however, they represent a vast potential for the criminal system to obtain things that are worthy but difficult for police and prosecutors to achieve: reconciliation and healing within the community. As ultimately public confidence will be best assured when the community feels its needs are met, the encouragement and flourishing of community-based restorative justice programs should be an important part of any system plan.

Recommendation: The Criminal Justice and Public Safety Plan for the Province should include a performance goal for increased use of restorative justice programs.

Recommendation: Expanded funding for restorative justice programs should be made available and innovative methods of funding, should be assessed, such as funding referrals, in cases where the offender would otherwise be subject to a significant criminal penalty.

17. RESOURCES AND PRIORITIES

During the course of the Review submissions were made formally and informally respecting whether I ought to make recommendations concerning additional resources and priorities.

The proper level of resourcing was not central to my terms of reference and much of the subject-matter of the Review is not directly connected to a particular view or level of funding for the system as a whole. I was not cautioned by anyone against making recommendations concerning funding, and my consideration of this topic has been made so as to be consistent with the nature and scope of the recommendations I have made in this Report.

A number of the submissions in favour of greatly increased financing proceed from assumptions about the current system that are not consistent with the recent data, or they proceed from a proposition about a general social priority for funding for the justice system that to my knowledge has not been adopted anywhere in Canada now or in the past.

There have been resourcing decisions made within the justice system that were criticized as uneven or unfair. In general, expenditures for policing services have increased significantly. Expenditures for prosecutors and the courts have increased, but these funds have principally been made available to fund required benefit increases.

As a result of the government's core services review several years ago, non-governmental organizations had substantial cutbacks made to their funding. In my view it is critical that resources to non-governmental organizations need to be made available where doing so is important to the effective performance of the system. In some senses they are part of the system and need to be treated as such.

Legal aid has been under constraint since the mid-1990s and apart from large case funding, has received very little incremental funding. Despite this, it has actively led in producing innovative programs and services. The submissions which touched on resources almost universally called for priority to increases in legal aid funding. In my view, incremental resources to enable legal aid to play an active role in the achievement of the reforms to the Provincial Court process would be necessary to its full success and would be money well spent.

There will clearly be financial implications to some of the recommendations made in this Report. However, many of the ideas or proposals committed to by the justice participants have not been refined to the point of determining budgets or whether incremental funding will be required. Furthermore, several of the proposals will involve spending in future fiscal periods. I have not sought access to the detailed budgets of the government that would be needed in relation to shifts in, or requests for, additional funding.

As a result, I do not have any recommendations to make concerning the overall funding to the criminal justice system. I certainly encourage the government to implement the measures recommended by this Review and to contribute to their success by making incremental resources available. In my view, a more compelling case for additional funding will be made if the participants commit to the scope and scale of changes needed for success. I recognize that this decision will ultimately need to be made having regard for the fiscal situation and other demands on public resources.

I think it is appropriate to add a word about priorities. In my view enabling the immediate commencement of a backlog reduction initiative should be given a high priority. Similarly, providing the Provincial Court and Supreme Court with enhanced business information and systems advice should take priority over other matters. Finally, the various measures which are recommended to achieve early case resolution are, in my view, worthy of funding priority.

No recommendation is made as to the general level of funding for the criminal justice system.

Recommendation: Within the scope of available funding, priority should be considered for reducing the backload of cases, enhancing the managerial capacity of the courts, and enabling the full realization of the early case-resolution process.

Recommendation: To enable the aggressive resolution of the backlog of cases, an additional five judges should be appointed to the Provincial Court.

ABBREVIATIONS AND ACRONYMS

ACT	assertive community treatment
ADAG	assistant deputy attorney general
ADM	assistant deputy minister
ARJAA	Abbotsford Restorative Justice and Advocacy Association
BCACP	British Columbia Association of Chiefs of Police
BCCLA	British Columbia Civil Liberties Association
BCGEU	British Columbia Government Employee's Union
CAAR	Case Assignment and Retrieval
CAD	computer aided dispatch
CAP	community accountability programs
CBA	Canadian Bar Association
CCFM	Criminal Case Flow Management
CCJS	Canadian Centre for Justice Statistics
CCM	Court Case Management
CFO	Civil Forfeiture Office
CMS	Case Management System
Committee	Provincial Community Safety Steering Committee
CORNET	Corrections Network
Council	Criminal Justice and Public Safety Council
Court Scheduling Project	Provincial Court Process and Scheduling Project
CSCPB	Community Safety and Crime Prevention Branch
DCC	Downtown Community Court
DTES	Downtown East Side
FASD	fetal alcohol spectrum disorder
FTE	full time equivalent
JSB	Justice Services Branch
ICON	Integrated Corrections Operations Network
IRP	Immediate Roadside Prohibition
JCM	Judicial Case Manager
JOT	Justice on Target
JUSTIN	Justice Information System
LCJB	local criminal justice boards
LSS	Legal Services Society
MAG	Ministry of Attorney General
MCFD	Ministry of Children and Family Development
Ministry of Justice	Ministry of Justice and Attorney General
NCJB	National Criminal Justice Board
NFPC	North Fraser Pre-Trial Centre
OCJ	Office of the Chief Judge
Plan	Criminal Justice and Public Safety Plan
PRIME	Police Records Information Management Environment
PSSG	Ministry of Public Safety and Solicitor General
RCC	report to Crown counsel
RCMP	Royal Canadian Mounted Police
SFU	Simon Fraser University
STICS	Strategic Training in Community Supervision Initiative
TLH	timeline hearing
UBCM	Union of British Columbia Municipalities
VIC	Victoria Integrated Court

ANNEX: POLICY CONTEXT

1. BC INITIATIVES

Recent justice reform initiatives underway in British Columbia and elsewhere have continued the trend of preferring to use tribunals and to provide the public with alternatives to traditional courtroom litigation.

1.1 IMMEDIATE ROADSIDE PROHIBITION (2010)

From a systems perspective, the transfer of impaired driving concerns away from the criminal justice system represents the loss of a significant volume of traditional criminal work. From every perspective this move should alert us all to the urgency and dramatic need for change.

In September 2010, the Province of British Columbia's IRP program came into effect through amendments to the *Motor Vehicles Act*. These amendments created an administrative regime to address impaired driving by establishing consequences for drivers who receive a "fail" or "warn" reading on a breathalyser or refuse to provide a breath sample.[299]

The impaired driving provisions of the Criminal Code, together with active enforcement, have been credited with helping facilitate a massive change in public opinion about drinking and driving, as well as a significant change in behaviour which has seen rates of drinking and driving, as well as fatalities and injuries caused by impaired drivers, drop substantially.

In British Columbia, fatalities from impaired driving dropped from over 200 per year in the late 1980s to just over 100 per year in 2000. However for ten years, the number of fatalities remained relatively constant, at an average of 113 per year. Roadside prevalence surveys (voluntary fluid samples provided for analysis) showed a consistent level of alcohol and drug impaired driving at about 8–10% of drivers surveyed, while other surveys where drivers voluntarily had their breath alcohol tested showed that between 1–2% blew over 0.08 and 3–5% blew over 0.05 percent alcohol.[300]

As well, Criminal Code enforcement was proving to be more and more time-consuming for law enforcement, requiring four to five days of police officer time per criminal charge, as well as time consuming for the prosecution. In consultations, impaired driving charges were estimated to consume a greater percentage of the criminal court hearing hours than their portion of new cases in the system, formerly 12%.[301]

These are cases with important implications for those accused of the offence. Breathalyser legislation was developed to enable the efficient detection and prosecution of impaired drivers. Over the course of the past decade, however, the cost to the justice participants and the length of time required to try these cases have steadily increased. Prior to the IRP, cases could take from 10 to 24 months to complete.[302] During consultations it was regularly observed that impaired driving cases which once took half a day to try now take three to four days at trial. There are no plans to reduce the length of these trials, and my impression is that such a reduction is not considered readily achievable nor a priority given the success of the IRP program and the substantial diversion of these cases away from the Court system.

299 See: Ministry of Public Safety and Solicitor General, News Release 2010PSSG0026-000472 "B.C. Introduces Canada's Toughest Impaired Driving Laws" (27 April 2010) online: Government of British Columbia <http://www2.news.gov.bc.ca/news_releases_2009-2013/2010PSSG0026-000472.htm>.
300 Information provided to the BC Justice Reform Initiative by the Office of the Superintendent of Motor Vehicles, British Columbia.
301 Information provided to the BC Justice Reform Initiative by the Office of the Superintendent of Motor Vehicles, British Columbia.
302 Information provided to the BC Justice Reform Initiative by the Office of the Superintendent of Motor Vehicles, British Columbia.

The IRP legislation has nearly identical goals to the criminal law in terms of impaired driving. Its aim is to streamline the detection and adjudication of alleged impaired driving, with the view to applying a meaningful sanction that will deter the offender and signal society's general disapproval. The hope was that non-penal sanctions would—if applied immediately—have a substantial effect on offender behaviour. It was also expected that the more lenient circumstances concerning disclosure and paperwork would enable police officers to issue, in a shift, many more IRP notices than criminal charges.

Although challenged as a violation of constitutional limits, this law has been found to be a valid exercise of the provincial power to legislate the licensing of drivers and to enhance highway traffic safety.[303]

The IRP applies consequences that are significant (loss of vehicle and driving privileges, and monetary penalties which cover the cost of the program) and designed to change the behaviour of the impaired driver (ignition interlock, education programs and counselling). After roadside testing, the consequences are immediate, and appeals are dealt with in less than 21 days.[304]

By any measure this program has been hugely successful. It has had a significant impact on highway safety and a collateral effect on the criminal justice system in the province. In the first year after the IRP program came into effect, the MAG reported a 40% decrease in fatalities attributed to impaired driving.[305]

All the criminal laws respecting impaired driving remain in place and available to police and prosecutors. However, the number of impaired driving cases in the criminal court system has dramatically declined, reducing the burden that these cases placed on the court system. Criminal cases have dropped from about 900 per month before implementation, to a low of about 140 per month, creating significant capacity in the criminal court, with about 8,000 fewer impaired driving cases in Provincial Court in 2011/12.[306] The increased efficiency in administering roadside screening and administrative sanctions have freed up police resources to increase enforcement and roadside screening, which in turn increases the likelihood of detection of impaired driving.

1.2 CIVIL RESOLUTION TRIBUNAL ACT (2012)

Another recent example of this ongoing trend towards tribunal decision-making is The *Civil Resolution Tribunal Act* (Bill 44), which received royal assent on May 31, 2012. It will establish a new dispute resolution and adjudicative body with authority to hear certain categories of disputes as set out in the Schedule to the Act. Initially this would include some strata property disputes and, where the parties jointly agree, small claims matters,[307] but the authority of the tribunal to hear other disputes may be expanded in future regulations.

According to the Ministry of Justice, civil resolution tribunals established under the Act are expected to resolve disputes within 60 days, as opposed to the 12 to 18 months currently required in small claims court.[308] The mandate of the tribunals includes the provision of dispute resolution services "in a manner that is accessible, speedy, economical, informal and flexible" while still applying the principles of law and fairness.[309] The government also expects that the level of resources applied to a dispute under the *Civil Resolution Tribunal*

303 *Sivia v. BC (Superintendent of Motor Vehicles)*, 2011 BCSC 1639 at para 13.
304 For further information on Immediate Roadside Prohibitions, see: *Impaired Driving – The Various Prohibitions and Suspensions,* online: British Columbia Ministry of Justice <http://www.pssg.gov.bc.ca/osmv/prohibitions/impaired-driving.htm#irp>.
305 British Columbia Ministry of Public Safety and Solicitor General, News Release, "Ministerial Statement on Immediate Roadside Prohibitions" (November 30, 2011), online: PSSG <http://www2.news.gov.bc.ca/news_releases_2009-2013/2011PSSG0153-001555.htm>.
306 See discussion in Section 3.9 of this Report.
307 For a description of Bill 44, 2012, see: British Columbia Ministry of Attorney General, "Civil Resolution Tribunal Act", online: British Columbia Ministry of Justice <http://www.ag.gov.bc.ca/legislation/civil-resolution-tribunal-act/index.htm>.
308 British Columbia Ministry of Justice, News Release, "Online civil dispute tools to save time, money" (7 May 2012), online: Ministry of Justice <http://www2.news.gov.bc.ca/news_releases_2009-2013/2012JAG0068-000600.htm>.
309 Bill 44, *Civil Resolution Tribunal Act,* 4th Sess, 39th Parl, British Columbia, 2012, s 2(2) (assented to 30 May 2012), SBC 2012, c 25.

Act will be proportionate to the nature of the dispute and the issues involved,[310] presumably under the policy direction of the executive branch.

1.3 FORFEITURE OF PROCEEDS OF CRIME (2006)

Police have long been of the view that an important part of law enforcement is to remove the profit from illegal activity in order to reduce the incentives for committing certain types of crime.

Concerned that the Criminal Code provisions authorizing the forfeiture of proceeds of crime had no significant impact on criminal activity, in 2005 British Columbia developed an alternate scheme, under the provincial constitutional responsibility for property and civil rights, to attach proceeds of crime.

The *Civil Forfeiture Act* (2006) established a scheme to suppress unlawful activity by forfeiting illicit profits and preventing property from being used to commit unlawful activity. The Act created a new civil cause of action that permits the province to apply to a court for the forfeiture of property that is found to be either the instruments or proceeds of unlawful activity.[311]

The Civil Forfeiture Office (CFO) was created to administer the Act. Funds forfeited under the Act must be paid into the Civil Forfeiture Special Account and may only be paid out of the Special Account at the discretion of the director for

- The administration of the Act;
- Crime prevention activities;
- Crime remediation activities; and,
- Eligible victims.[312]

Files are referred to the CFO by police and other investigative agencies and have been received from every police agency in British Columbia, as well as the BC Securities Commission, Ministry of Environment, the U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, and U.S. Attorney's Office. This suggests that police find this process a useful adjunct to their criminal investigations.[313]

Three hundred and seventy nine litigation files have been concluded to date, all but one in favour of the director of civil forfeiture, resulting in the forfeiture of $27 million. A further 209 litigation files are before the courts involving property with a gross value of approximately $50 million.

Approximately $8 million in forfeited funds have been paid in grants to communities for crime prevention and crime remediation initiatives, and $900,000 in forfeited funds have been paid to eligible victims. [314]

In 2011, the legislation was amended to permit administrative forfeiture of property of lower value (under $75,000, not real property) without going to court, unless the defendant disputes the claim.[315] These new provisions make it cost-effective to proceed in cases where the property is of lower value but there are strong public interest factors in favour of proceeding. Examples include amounts of cash, vehicles and jewellery commonly seized from drug dealers, gang members and other organized criminals. This process reduces costs for both government and defendants, as well as reducing demands on Supreme Court resources. If no one disputes the province's claim within 60 days of notification, the director of civil forfeiture can dispose of the property. In the event of a dispute, the case automatically reverts to the usual civil forfeiture process, and defendants are entitled to dispute the matter up to and including a civil trial in BC Supreme Court.

310 British Columbia Ministry of Attorney General, "Civil Resolution Tribunal Act", online: British Columbia Ministry of Justice <http://www.ag.gov.bc.ca/legislation/civil-resolution-tribunal-act/index.htm>.
311 For further information on Civil Forfeiture in British Columbia, see: British Columbia Ministry of Justice, "Civil Forfeiture in British Columbia", online: British Columbia Ministry of Justice<http://www.pssg.gov.bc.ca/civilforfeiture/>.
312 *Civil Forfeiture Act*, SBC 2005, c 29, Part 6.
313 Information provided to the BC Justice Reform Initiative by the Civil Forfeiture Office.
314 Information provided to the BC Justice Reform Initiative by the Civil Forfeiture Office.
315 *Civil Forfeiture Act*, SBC 2005, c 29, Part 3.1.

In the first year of operations, 281 administrative forfeiture files have been undertaken by the Civil Forfeiture Office. One hundred and thirty-nine of these cases have been concluded, resulting in net forfeitures of $911,000.[316] Administrative forfeiture files do not require the services of a lawyer, unless disputed. The CFO estimates that it saved between $300,000 and $500,000 in legal fees through the use of administrative forfeiture in these cases. Only 10% of administrative forfeiture cases have been disputed.[317]

There has been no evaluation of the impact on levels of crime. However $27 million has been removed from the criminal economy, and police believe that a referral to the CFO is a useful element in their strategy to discourage crime.

This is another recent example of policy-makers moving a subject matter away from the criminal justice system in order to obtain greater process efficiencies and better outcomes—in this case more effectively capturing proceeds of crime and hopefully deterring criminal activity.

1.4 TRANSFERRING RESPONSIBILITY FOR THE ADJUDICATION OF BYLAW TICKET DISPUTES TO MUNICIPALITIES (2003)

The *Local Government Bylaw Notice Enforcement Act*[318] was developed to give local governments more authority to deal with local issues and to avoid the time-consuming court processes associated with disputing minor bylaw tickets in the Provincial Court. More rigorous penalties for serious bylaw breaches were created, which continue to be heard in Provincial Court.

This strategy not only freed up time in Provincial Court for criminal, civil and family matters but also addressed the complaints of municipal governments that their matters were of the lowest priority in the Provincial Court, often passed over in favour of matters seen as having greater importance.

The new scheme provided that a notice of a bylaw infraction can be delivered by mail or by leaving it on the vehicle if it is a parking contravention. Then local governments can enter into what are called "compliance agreements" where there is a need for corrective action. Alternatively, if that is neither appropriate nor successful, then these matters will be referred to an adjudicator rather than to the Provincial Court.

The Act provides a more informal process for the hearing of these disputes. Hearings can take place with people present in person, by video conferencing, by telephone or even based on written submissions.

Recent amendments to permit evidence in writing where it is not disputed were designed to streamline the adjudication process by reducing the need for unnecessary appearances, particularly in relation to facts that are seldom seriously disputed. The movement of the responsibility for prosecution of violation tickets to the police reflected the relatively straightforward nature of most violation ticket disputes, which did not require the expertise of legally trained prosecutors.

1.4.1 New Administrative Process for Disputes Over Traffic Tickets

Very recently the provincial government announced that a new system for adjudicating provincial traffic offences (tickets) will be implemented, eliminating the need for people to dispute their traffic tickets in court in front of a judicial justice. Most hearings will be held by telephone, and disputes will be resolved within 60 days rather than the current 7 to 18 months.[319]

316 Information provided to the BC Justice Reform Initiative by the Civil Forfeiture Office.
317 Information provided to the BC Justice Reform Initiative by the Civil Forfeiture Office.
318 SBC 2003, c 60.
319 British Columbia Ministry of Justice, News Release, 2012JAG0072-000628, "Justice reform strengthened by traffic ticket changes" (7 May 2012), online: Government of British Columbia <http://www2.news.gov.bc.ca/news_releases_2009-2013/2012JAG0072-000628.htm>.

1.5 OTHER INITIATIVES

The landscape of reform in the criminal justice system includes an array of previous, emerging and ongoing initiatives to address identified problems and to improve both the outcomes and performance of the justice system. This compels our attention; the likelihood or actual success of these initiatives should inform any reform program.

Their sheer number reflects not only the number of identified issues but also the number of differentiated, independent and empowered professionals. The strength of this entrepreneurial service innovation lies in its potential to produce successful local models that will be scalable as they become evaluated and as their successes are verified. There is, however, one notable weakness: leaders within the system can suffer from fatigue just by staying in touch with the large number of ideas and initiatives. Thus you have the paradox of a system that is resistant to change but beset with a large number of efforts to produce various changes in both process and outcomes.

At the same time, in British Columbia as in jurisdictions around the world, it is probably fair to say that there are more failed reform initiatives than successful ones, and it is thus important to try to understand the factors that have tended to contribute to success or failure.

1.5.1 Initiatives Designed to Improve Outcomes

(a) Youth Crime

Perhaps the most dramatic success is in improved youth crime outcomes. Youth crime in British Columbia has been declining significantly for the last decade, at a much faster rate than the rest of the country. The number of youths incarcerated is down dramatically. In all of British Columbia an average of 100 youth were in custody in 2012, both in remand and sentenced.[320]

This trend has been evident for substantially more than a decade. As with all changes in the crime rate, it is difficult to identify the causes of change. However, youth justice experts suggest that it is due to a variety of factors, including changes in police practice from primary reliance on the formal justice system to deal with offending behaviour, supported by a network of integrated support programs linked to community supervision.

This practical achievement was facilitated by the transfer of youth justice to the MCFD in 1995 which enabled services to young offenders to be effectively co-ordinated with services to youth generally and resulted in a well-functioning network of support and services that has effectively reduced and prevented youth crime and reduced recidivism. This approach has been supported by the implementation of the Federal *Youth Criminal Justice Act* in 2003, a coherent policy favouring a proactive and integrated approach to youth in conflict with the law.

(b) Evidenced-Based Approach to Correctional Practice

In the consultations with BC Corrections it was observed that today's system is the result of a dramatic change in culture that began in 1994. This shift in culture has been centred around pursuing a rigorous evidence-based approach to its programs.

The results have been significant and enduring. There is now greater confidence in the ability to evaluate the risks to the community from an offender, and well-designed programs can reduce recidivism by addressing underlying cognitive and behavioural conditions that accompany criminal conduct.

Programs are developed based on best practice and then evaluated after implementation. Successful programs include domestic violence programming (Relationship Violence Prevention Program), anger management (Violence Prevention Program) and Integrated Offender Management, an innovative approach to the release of high risk offenders from custody. All of these have been evaluated to show reduction in recidivism. The Sex Offender Maintenance Program is currently being evaluated.[321]

320 See discussion in Section 3.3.
321 For further information in relation to the Core Programs in use and under development, see: British Columbia Ministry of Justice, Corrections <http://www.pssg.gov.bc.ca/corrections/in-bc/details/overview.htm>.

Most recently Corrections participated in the Public Safety Canada pilot and evaluation of Strategic Training in Community Supervision Initiative (STICS). Corrections is now implementing this successful program to improve the impact probation officers have on recidivism through more effective supervision.[322]

For almost the last 20 years, Corrections has committed to a rigorous evidence-based approach to developing and implementing programs for offenders. As a result, resources are targeted to clients who will benefit the most. Leading Canadian research has identified the key factors to be addressed as offenders' risk, needs and responsivity to intervention. Corrections programs are designed with these principles in mind.[323] Services are delivered consistently, even where clients move back and forth from the community to custody.

(c) Drug Treatment Court of Vancouver

This specialized court integrates the judiciary, federal and provincial prosecutors, Corrections, Social Development and Vancouver Coastal Health to develop and implement comprehensive plans for offenders to reduce or manage their addictions and reduce their criminal behaviour.

The 2010 comprehensive evaluation[324] determined that Drug Treatment Court of Vancouver clients demonstrated a significant reduction in recidivism. This is particularly impressive, since the evaluation also found that, in comparison to the general population in the Downtown East Side, Drug Treatment Court of Vancouver clients were less likely to be responsive to the justice system and substance abuse-related interventions. However, the evaluation noted that it is not possible to determine which of the program elements influence the outcome.

This success appears to be a product of the application of a specialized approach to a particular problem through a separate and disciplined model. The factors which appear to have contributed to success include integrated program planning, evidence-based program development, ongoing monitoring and development, and an intensive, integrated and dedicated drug treatment service.

(d) Downtown Community Court

The DCC was created as a pilot project in 2008 in response to a recommendation of the Justice Review Task Force and its Street Crime Working Group. The pilot was implemented to test a more efficient way to seek early constructive resolutions for summary offences, through an integrated delivery model for justice, health and social services.[325]

This is an ambitious approach which builds on judicial leadership and is aimed at transforming the entire approach to all incoming cases from a highly demanding part of the City of Vancouver.

The interim evaluation, which focused on process, found that the court was not demonstrably more efficient than other courts in BC. However, there was a high degree of satisfaction around the increased collaboration in the court.[326] The full evaluation is expected in 2013.

The caseload in DCC is higher than expected, which requires staff to spend more time in the courtroom with less time available for out-of-court discussions, offender management and programming.

Although DCC is a resolution court only, there are no time limits placed on the accused to

322 British Columbia Ministry of Justice, News Release, "Budget 2012 funds new probation officers, innovative approach" (6 March 2012), online: Ministry of Justice <http://www2.news.gov.bc.ca/news_releases_2009-2013/2012JAG0012-000242.htm>.
323 For further information about the Risk/Needs/Responsivity Model, see: James Bonta & DA Andrews, *Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation 2006-2007* (2007), online: Public Safety Canada <http://www.publicsafety.gc.ca/res/cor/rep/_fl/Risk_Need_2007-06_e.pdf>.
324 JM Somers et al., "Drug Treatment Court of Vancouver (DTCV): an Empirical Evaluation of Recidivism" (2011), Addict Research and Theory 2, p. 117.
325 For further information in relation to the Downtown Community Court, see: Criminal Justice Reform <http://www.criminaljusticereform.gov.bc.ca/en/justice_reform_projects/community_court/index.html>.
326 Ministry of Attorney General, Justice Services Branch & Ministry of Public Safety and Solicitor General, Corrections Branch, *Downtown Community Court in Vancouver, Interim Evaluation Report* (30 August 2010), online: Criminal Justice Reform <www.criminaljusticereform.gov.bc.ca/en/reports/pdf/interimevaluation.pdf>.

either plead guilty and have the matter disposed of in DCC or set the matter down for trial at the Vancouver Provincial Court.

During consultations the cost-effectiveness of the DCC was raised as a potential barrier to scaling it to other areas of the province, even should the evaluations be positive.

Although not yet evaluated, there is a strong view that the effective co-ordination between the justice system and the health and social service sectors has led to improved outcomes for offenders.

(e) Prolific Offender Management Pilots

During the consultations police from around the province endorsed a focus on prolific offenders as an example of proactive strategic policing that benefits from integration with the rest of the justice system. It represents a shift in thinking from event-based policing to offender-based policing. It has great potential for social benefits for victims, the community and the offender. It also contains the natural risk of abuse or injustice that accompanies any systematic focus on an individual for enforcement and attention.

This project was based on the national prolific offender scheme introduced in the UK in 2004, with the objective of reducing recidivism of the most chronic offenders, thereby reducing the level of crime.

The initiative was launched in six communities in British Columbia in February 2008. Local teams were established in each community, with representatives from corrections, police, prosecutors, victim services, the health authority BC Housing, and the Ministries of Social Development and Children and Family Development.[327]

Based on a common set of guidelines, the local teams identified approximately 20–40 offenders in each community who would be the subject of integrated and focused efforts, then notified them by letter. The teams pursued a two-pronged strategy of intensive support and enforcement, by offering offenders the opportunity to participate in rehabilitative programming and access supports, and at the same time assertively monitoring their behaviour and pursuing new charges when appropriate.

There was a commitment from the outset to do a rigorous evaluation, but two factors contributed to make meaningful evaluation difficult: the flexible definition of "prolific offender," with latitude in each site to identify the offenders they thought were most problematic and the lack of a standardized response to those offenders. This meant that it was not possible to identify a control group to compare outcomes.

The evaluation is underway but generally participants found the improved relationships and collaboration helpful.

(f) Victoria Integrated Court (2010)

It was a common observation during consultations that many of the offenders in the Provincial Court are afflicted with mental illness. Yet there is also evidence that there is not necessarily a relationship between mental illness and crime.

The VIC is led and managed by members of the Provincial Court in Victoria to improve the co-ordination of the justice, health and social sectors to better manage offenders with a history of mental illness, substance addiction and unstable housing. These offenders are thought to be responsible for a disproportionate amount of social disorder and nuisance behaviour in the community, with a high use of emergency services.[328]

The VIC is held in a dedicated courtroom in the Victoria courthouse one morning a week for cases involving a restricted group of offenders. In the community, offenders are managed by the assertive

327 For further information on the Prolific Offender Management Program, see: Criminal Justice Reform <http://www.criminaljusticereform.gov.bc.ca/en/justice_reform_projects/prolific_offender_management/>.

328 For further information on the Victoria Integrated Court, see: Provincial Court of British Columbia, *Victoria Integrated Court: Integration of Health, Social and Justice Services in our Community* (28 July 2011), online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/Victoria%20Integrated%20Court%20Report.pdf> and Provincial Court of British Columbia, "Victoria Integrated Court in its Second Year: Continuity and Progress" (26, June 2012), online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/Victoria%20Integrated%20Court%20In%20Its%20Second%20Year.pdf>.

community treatment (ACT) teams led by Vancouver Island Health Authority. The court is informed by the teams and supports the teams' efforts to manage offenders effectively in the community.

The court aims to increase public safety by decreasing recidivism, providing more effective sentencing that supports offender management and supporting more effective use of community services.

The court dealt with 128 offenders in the first year.[329] A comprehensive survey of participants, including offenders, was completed after the first 12 months.[330] The survey found

- The roles, responsibilities and processes of the VIC are generally clear to those involved;
- The VIC facilitated increased communication and collaboration among stakeholders and is perceived to have had a positive impact on their work;
- The position of co-ordinator facilitates consistency, although there may be some duplication in relation to hearing the cases in court;
- Offenders have a positive view of the process;
- Stakeholders were of the view that the process is now more effective for this group of offenders, it helps to reduce recidivism, and it improves offenders' mental and physical health and their access to services;
- Community awareness and engagement could be increased; and
- Service capacity issues would have to be addressed before the court could be expanded.

The VIC plans to develop some outcome measures including contact of offenders with the criminal justice system, health and social services.

(g) Alternative Measures (2010)

Early risk assessment has been made available to the prosecutors at the charge approval stage in six locations in British Columbia as part of a pilot project. This was to determine if providing early risk assessments at the charge approval stage would increase the referrals to alternative measures. The referral to risk assessment could be made any time in the alternative measures process. According to a preliminary assessment, prosecutors at the pilot locations found that having the assessment available at the charge approval stage was helpful; however there appeared to be a limited increase in the number of referrals. The evaluation is being completed and a final report will be available in September 2012.[331]

1.5.2 Initiatives Designed to Reduce Workload or Improve Efficiency

(a) Criminal Case Flow Management Rules (1999)

In 1998, the Chief Judge of the Provincial Court issued a report identifying issues related to increasing problems of high volumes, backlogs, and a culture of delay and inactivity.[332]

The Chief Judge convened a task force consisting of judges, defence lawyers, prosecutors, representatives of the Law Society, LSS and Court Services Branch of the MAG. Their recommendations led to the CCFM rules[333], enacted in September 1999, which were intended to achieve a "wholesale change in 'culture' in criminal practice, encouraging early resolution of cases where appropriate, and achieving greater event certainty. More specifically, two primary goals were to reduce the number

329 Provincial Court of British Columbia, *Victoria Integrated Court: Integration of Health, Social and Justice Services in our Community* (28 July 2011), p. 26, online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/Victoria%20Integrated%20Court%20Report.pdf>.
330 See: RA Malatest & Associates Ltd, *Victoria Integrated Court Exploratory Process Report: Reflections on the Court's First Year of Operation* (19 July 2011), online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/Victoria%20Integrated%20Court%20Exploratory%20Process%20Report.pdf>.
331 Information provided to the BC Justice Reform Initiative by the British Columbia Ministry of Justice.
332 Chief Judge Robert W. Metzger, *The Report of the Chief Judge: Delay and Backlog in the Provincial Court of British Columbia* (Victoria: Ministry of Attorney General, 1998), online: Legislative Library of British Columbia <http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs2012/319602/delay_and_backlog_in_the_provincial_court_of_british_columbia.pdf>.
333 Associate Chief Judge Anthony J. Spence, *Report to the Chief Judge on Criminal Caseflow Management Rules* (April 2002), online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/ReporttoCJonCCFM.pdf>.

of cases set for trial that do not proceed to the calling of evidence, and to reduce the number of unproductive appearances."[334]

While there appeared to be some improvements in the areas of trial certainty and backlog, concerns that the rules were increasing rather than decreasing the number of appearances led to a review of the impact of the rules by Associate Chief Judge Spence, who reported on his findings, with recommendations for changes to the rules, in 2002.[335]

Judge Spence noted a variety of concerns with the rules. These included a lack of flexibility—requiring appearances even when they seem unnecessary—and inconsistent support for the rules from defence counsel, prosecutors and even the judiciary—thus undermining their consistent application. Judge Spence did not address in his report any impact of the rules on Court Services, which also reported increased workload as a result of the increase in appearances.

Recommendations were made to consider increasing flexibility while still maintaining the fundamental elements of the rules.

As discussed in the opening of Section 10, there is a general consensus the rules have not succeeded. The strongest sign of this is that the collapse rate for those cases set for trial still appears to be around 70%.[336]

(b) Creation of JCM Court in Victoria and Port Coquitlam (2007, 2008)

In June, 2007, then Chief Judge Stansfield issued a Practice Direction[337] directing changes in criminal case processing in support of the CCFM rules. The goal was to employ JCMs to deal with virtually all administrative (trial confirmation hearings, arraignment hearings) and remand matters. This then would focus available judicial time on trials and hearings.

In August of 2008, the MAG initiated a review of the impact on Ministry resources of the Chief Judge's Practice Direction, in relation to the creation of the JCM Court and the expanded role of the JCM. It looked at two locations Victoria and Port Coquitlam.

The report found that the judiciary reported a decrease in administrative appearances. Crown prosecutors at the pilot sites reported that, because of the increase in front end attention to the files, the quality of their work improved. However, all participants—Crown prosecutors and administrators, court administrators and sheriffs, and defence counsel—reported an increase in work and an increase in resources required. Although judicial workload decreased, appearances per case increased, as did the time to completion.

The Review concluded that it was likely that some cases may benefit from the increase in front end resources and processes while other less complex cases may be hindered by the extra processes.

(c) Backlog Reduction at Vancouver Provincial Court (2004)

In February 2004, the Attorney General and Chief Judge announced a joint initiative to get criminal cases to trial faster at Vancouver's Provincial Criminal Court, 222 Main Street.[338] A Committee was formed, chaired by Chief Judge Baird Ellan, with representatives from the judiciary, Criminal Justice Branch and Court Services Branch (both court administration and sheriffs) of the MAG, LSS, the CBA and the Law Society.[339]

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334 Provincial Court of British Columbia, *Annual Report 2000/2001 Fiscal Year*, (Vancouver: Provincial Court of British Columbia, 2001) at p. 16, online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/annualreport2000-2001.pdf>.
335 Associate Chief Judge Anthony J. Spence, *Report to the Chief Judge on Criminal Caseflow Management Rules* (April 2002), online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/downloads/pdf/ReporttoCJonCCFM.pdf>.
336 Information provided to the BC Justice Reform Initiative by the Office of the Chief Judge, Provincial Court of British Columbia.
337 Provincial Court of British Columbia, Chief Judge's Practice Direction Victoria-South Island District, "Criminal Case Flow Management Rules" (June 18, 2007), online: British Columbia Provincial Court <http://www.provincialcourt.bc.ca/types-of-cases/criminal-and-youth/practice-directions>.
338 See: discussion in Provincial Court of British Columbia, *Main Street Criminal Procedure Committee Backlog Reduction Initiative: Report on Backlog in Vancouver Adult Criminal Court* (January 2005), at p. 1, online: <http://www.provincialcourt.bc.ca/downloads/pdf/MainStreetCriminalProcedureCommitteeReportonBacklog.pdf>.
339 Provincial Court of British Columbia, *Annual Report 2004-2005 Fiscal Year* (Vancouver: Provincial Court of British Columbia, 2005), at p. 18, online: <<http://www.provincialcourt.bc.ca/downloads/pdf/annualreport2004-2005.pdf>.

The Committee recommended and implemented a variety of measures to maximize courtroom usage; make more effective use of judicial resources; comply with the CCFM rules; improve Crown file ownership and the level of Crown case preparation; and improve early communication between counsel, to support early resolution and increase the predictability of scheduling.[340]

The judicial complement was increased through the use of visiting judges from other court locations, and the scheduling of long trials was adjusted to maximize courtroom utilization.

Concern over the 70% trial collapse rate led the Committee to recommend sufficient Crown resources to support triple booking of cases, even though this would result in Crown preparing three times the number of cases than can actually proceed.

The committee also recommended increased use of alternative measures, as well as moving consent releases to JPs where appropriate.

Over the balance of 2004, the committee oversaw the implementation of their recommendations, resulting in a reduction of time to trial from 11 to 7 months by December 2004.[341] However this reduction was not sustained.

(d) Criminal Case Management Pilot in Victoria

This pilot was intended to improve justice efficiency and effectiveness through earlier assignment of cases to Crown and to reduce the number of administrative court appearances before arraignment by scheduling cases only when ready to proceed.[342]

The assumption behind the pilot is that since the majority of cases resolve within a reasonably short time period, there is no benefit to frequent administrative court appearances unless there is a requirement for a judicial decision. For represented accused who are not in custody, eligible criminal matters are, at first appearance, adjourned directly to a "timeline hearing" (TLH), which is 60 days away for summary matters and 90 days away for indictable offences. This is done with the expectation that either the matter will be resolved or arraignment will take place before that date. The TLH appearance is only held if the case is not arraigned, and Crown and defence counsel must explain why.

The TLH process is intended to encourage out-of-court communication between Crown and defence counsel to avoid the routine bi-weekly scheduling of cases while ensuring continued court jurisdiction over the criminal cases. The Criminal Case Management project also encourages the use of e-adjournments and e-arraignments.

The Criminal Case Management project includes pre-arraignment Crown file management whereby a dedicated prosecutor is assigned to manage each case in order to facilitate communication between Crown and defence counsel.

Additionally, a package of information about legal aid is provided to unrepresented accused early in the process. Applicants' financial information is also expedited to the LSS so that eligibility can be established sooner, expediting the retaining of counsel.

A process evaluation was conducted by RA Malatest & Associates in September 2011,[343] which concluded:

- Anecdotally, it is generally agreed that the TLH process has reduced or has a potential to reduce court appearances.
- While fewer court resources are used, there is a greater strain on administrative resources, particularly Crown support staff and registry clerks, and a variety of administrative problems.

340 See: Provincial Court of British Columbia, *Main Street Criminal Procedure Committee Backlog Reduction Initiative: Report on Backlog in Vancouver Adult Criminal Court* (January 2005), at p.1, online: <http://www.provincialcourt.bc.ca/downloads/pdf/MainStreetCriminalProcedureCommitteeReportonBacklog.pdf>.
341 See: Provincial Court of British Columbia, *Main Street Criminal Procedure Committee Backlog Reduction Initiative: Report on Backlog in Vancouver Adult Criminal Court* (January 2005), at p., online: <http://www.provincialcourt.bc.ca/downloads/pdf/MainStreetCriminalProcedureCommitteeReportonBacklog.pdf>.
342 See: Provincial Court of British Columbia, "Main Street Criminal Procedure Committee Backlog Reduction Initiative: Report on Backlog in Vancouver Adult Criminal Court" (January 2005) at p., online: <http://www.provincialcourt.bc.ca/downloads/pdf/MainStreetCriminalProcedureCommitteeReportonBacklog.pdf>.
343 RA Malatest & Associates Ltd *Court Case Management: Timeline Hearing Process Evaluation Final Report* (September 2011).

- The TLH process has required more active file management on the parts of Crown and defence counsel.
- While the amount of paperwork has increased for the JCM, they have been able to close the court for one full day due to fewer files/appearances, in part as a result of this initiative.
- The perceived efficacy of the TLH process varies significantly. The JCM and the judiciary are most positive about—and see the most benefits from—the TLH process. Defence and prosecution are somewhat divided, while administrative staff view the change to have had a primarily negative impact on their work.
- There have been some difficulties adapting to this change in culture and approach, and ongoing judicial guidance has been needed in order to make sure the process becomes normalized.

Overall, while the TLH process has begun to yield some of the objectives of the original judiciary direction, there have been some challenges to administrative work, scheduling and communication.[344]

A more systemic approach to the planning and implementation might have avoided some of the negative impact and increased workload.

(e) Bail Reform Pilot Project in the Peace River District and Surrey

The goal of this project was to free up court time for trials by holding bail hearings outside of courtrooms. The planning involved intensive workshops with staff from all of the justice sectors. The pilots were implemented in 2008/09 and continue.[345]

In the Peace River District, bail hearings during regular court hours occurred by video-conferencing between a judicial justice at the Justice Centre, the accused at the police detachments, and Crown and defence counsel at the courthouses in the three communities. It was expected that, as a result of the pilot, court resources would be freed up for trials and sentencing.

In Surrey, an additional Crown and duty counsel were made available for bail appearances with the Justice Centre on the weekends. It was expected that by effectively dealing with bail on the weekends, the need for bail hearings during the week would be reduced and that court resources would be reallocated to trials and sentencing.

An electronic assessment tool was developed as part of the project to assist the police with their determination whether to release the accused or proceed to a bail hearing before a judicial officer. Additional video-conferencing units were installed at court locations to permit defence counsel to conduct confidential interviews with the accused prior to proceedings.

The pilots were evaluated.[346] The findings in the Peace River District included:

- A reduction in unnecessary accused transports to the courthouse as accused remained at police detachments until they were either released by the police or a bail hearing before a judicial officer was held, using video-conferencing technology;
- A reduction in the time accused spent in police lock-ups awaiting a release decision;
- Decisions about pre-trial releases or remands were made with fewer court appearances, and the majority of hearings were occurring before judicial justices at the Justice Centre, reducing the demand on judicial and court resources for bail at the courthouses;
- Increased costs for police which were partially mitigated by sheriffs supporting the process in police stations; and
- Efficiencies created by the reduction in bail hearings at the participating courthouses did not,

344 RA Malatest & Associates Ltd *Court Case Management: Timeline Hearing Process Evaluation Final Report* (September 2011).
345 For further information on the Bail Reform Project, see: Criminal Justice Reform <http://www.criminaljusticereform.gov.bc.ca/en/justice_reform_projects/bail_reform/index.html>.
346 RA Malatest & Associates Ltd, *Program Evaluation and Marketing Research, Evaluation of the Bail Reform Project Peace Region and Surrey: Final Evaluation Report* (March 31, 2010), online: Criminal Justice Reform <http://www.criminaljusticereform.gov.bc.ca/en/justice_reform_projects/bail_reform/docs/brp_evaluation.pdf>.

however, result in a reduction of the total court appearances at these locations, as additional administrative-type appearances were scheduled, and the time to trial did not change.

In Surrey, the additional resources of Crown and duty counsel for weekend bail hearings did not increase the number of substantive bail decisions on the weekend and did not reduce bail appearances in court the following week. Nonetheless the participants believed that the process was more efficient and more effective and contributed to other efficiencies such as a drop in C-informations (re-laid informations).

Generally, participants found that video-conferencing was a more appropriate means to conduct an interview or a bail hearing than by telephone.

The pilots increased the workload of police in both sites. While it was appreciated that there would be a workload increase, its magnitude was not anticipated.

The project benefited from close engagement with the judiciary resulting in effective sponsorship. A collaborative approach was taken in the planning and development stage, with all stakeholder groups represented on the Core Team and the Steering Committee. The Core Team was considered to be a successful means of involving the various stakeholders, both in planning and implementation. Stakeholders suggested that this approach should be considered for other projects.

The project planning and implementation were undertaken with project management rigor, but should have more effectively monitored implementation and impacts, to either capture the benefits of what worked, or else make a course correction.

(f) Solicitor-Client Video Conferencing Pilot Project

The Solicitor-Client Video Conferencing Project, implemented in April 2011, provides defence counsel at the Vancouver and Surrey Provincial Courts with access to video-conferencing equipment to confer with their clients held in custody at the North Fraser Pre-Trial Centre (NFPC) in Port Coquitlam. The goal was to avoid unnecessary court appearances and prisoner transport, as well as defence counsel travel to correctional centres for in-person visits. The Solicitor-Client Video Conferencing Project provided the equipment and network support thought necessary for this to occur.

Evaluation is complete and shows that there has been very little uptake by defence counsel, with only 60 solicitor-client video visits to NFPC over the nine-month period, which amounts to fewer than seven video-conferencing visits per month.[347]

Although defence counsel were consulted in the development of the project, it appears that the design and/or the implementation did not adequately take into account the ways in which counsel prefer to speak with their clients. Issues include the requirement that counsel use the video-conferencing equipment at the courthouse, as well as the requirement for 24 hours notice to schedule an interview.

1.5.3 Efforts to Improve the Use of Information Technology

(a) JUSTIN/PRIME/CORNET

British Columbia has had a functioning Case Management System since the early 1990s; JUSTIN supports the judiciary, court services staff and the prosecution service. Police in BC have been using a common information system since the mid-2000s, and Corrections has had its own system CORNET since the early 1980s. The ability of these three systems to work together, since the late 1990s, is unique in Canada, and indeed in most countries.[348]

The LSS developed an integrated CMS in the late 1990s and is in the process of integrating its data with an up to date business management information system. This data has allowed LSS to predict demand for criminal legal aid services with far greater accuracy than other Canadian legal aid plans. Its growing involvement in the management of publicly funded complex criminal cases will require

347 Information provided to the BC Justice Reform Initiative by the British Columbia Ministry of Justice.
348 For further discussion of these systems, see Section 8.1 of this Report.

effective use of both case management technology and business information systems.[349]

ICON was recently developed by Corrections for business intelligence, electronic forms and a secure electronic portal. The business intelligence component was adopted by court services, the management services branch of the Ministry of Justice in relation to human resource data, as well as the youth justice division of the MCFD. This new system allows a comprehensive cross-referenced view of operational data, with information about clients, cases and staff for management purposes as well as for research and evaluation, for all parts of the justice system.[350]

(b) Simulation Model

The Ministry of Justice has been working with the Complex Systems Modeling group at SFU for the last five years to develop a simulation model for the justice system. The model permits the justice system to model specific changes in resource allocation, as well as policy and legislation, prior to implementation.

The model has demonstrated its predictive capability to its developers but has not been publicly used or tested. The project has benefited from SFU's experience with modeling other complex systems, including health wait lists, as well as the availability of extensive information from the Ministry's existing systems. The development process required intense scrutiny of Ministry data by representatives from each sector, and as a result has led Ministry staff to have a better understanding of their own data.

2. OTHER JUSTICE REFORM INITIATIVES IN CANADA

The consultations carried out included people in Alberta, Manitoba and Ontario concerning their recent experiences. Of particular importance were the process reform underway in Alberta (building on earlier reforms in Manitoba) and the Justice on Target (JOT) initiative in Ontario. The Review also looked at international initiatives for possible lessons. Of particular importance is the recent experience in the United Kingdom, including the publication in early July 2012 of a new White Paper, "Swift and Sure Justice."

The purpose of these consultations and consideration of the literature included the following:

- Are other systems experiencing similar problems?
- Are there common diagnoses of underlying issues?
- Identifying possible solutions and possible barriers to success.

Across Canada there appears to be widespread agreement on the importance of timeliness and the need for dramatic improvement in the time to trial. There are a number of projects aimed at improving court process and timeliness. Some successes have been reported, but there is concern that no enduring systemic change seems to have been accomplished anywhere in Canada. A common observation is that the successes have been championed by particular leaders and that, on their ceasing office, progress can stall and some or all of the original problems may reoccur.

Many of the particular problems such as disclosure and large case management are the subjects of conversations between those expert in criminal law across the country.

No jurisdiction appears to have achieved a satisfactory level of performance on the basis of reforms that could be readily adopted into British Columbia. The Alberta process reforms hold promise and are in the course of being adapted by the Provincial Court and Court Services Branch for application in British Columbia. The Ontario JOT program has dramatically improved institutional relationships, particularly through the establishment of integrated working groups centred around courthouses throughout the province, under a Provincial Board co-chaired by the Deputy Minister and a Superior Court Justice. It also appears to have enriched the understanding of the

349 For further discussion of these systems, see Section 8.1 of this Report.
350 For further discussion of these systems, see Section 8.1 of this Report.

cause of the problems and the barriers to change. However, it has not reached its stated goals of improving the time to trial by 30% and reducing the number of appearances per case by 30%; it is unclear whether it is likely to do so.

The projects in other provinces have been focused on delay and unproductive process. There is a good deal of innovation around problem-solving and integrated courts.

No province appears to have arrived at an overall plan that integrates improved process and fairness with achieving improved outcomes.

It may be useful to provide some detail regarding the experiences found useful to the Review.

2.1 ALBERTA

The Court Case Management (CCM) Program "is a judicially-led initiative designed to effectively manage cases in Edmonton and Calgary adult Provincial Criminal Court."[351] The CCM implemented a number of methods to address scheduling and disposition of matters in the Provincial Court system, including:

- Assignment Courts to use a "day-of" approach to scheduling in order to evenly distribute daily trial work among judicial resources;
- Low Complexity Courts to allow low complexity matters to proceed to trial more quickly;
- Justice of the Peace Counter (i.e., a person can appear before a JP at a counter and not in a courtroom);
- Case Management Office (CMO) Counter to deal with administrative and uncontested matters outside a courtroom and to allow defence counsel to make appearances and book trials;
- Required Appearance Court;
- Scheduled Disposition Courts;
- Crown File Ownership, assigning one Crown prosecutor to a case from beginning to end, promoting proper case management, reducing time spent reviewing files and improving accountability; and
- Technological improvements such as a prosecutor information management system, a Web-based courtroom scheduling system, and electronic court signage in the Edmonton Courthouse.

The CCM Program was completed on time and below budget. The "CCM1 Closeout Report"[352] describes these initiatives and also outlines performance metrics (i.e., Court hours per day, time to trial, number of appearances, etc.) from directly before and directly after the implementation of the initiatives.

Data gathered over a five month period following implementation of the initiatives showed mixed results. For example, average court time hours per day increased by 19.2% in Edmonton but only by 1.8% in Calgary. Meanwhile, the length of time from first appearance to disposition of a matter by trial actually increased by 6.8% in Calgary and decreased by 3.8% in Edmonton.

Alberta is now in the second phase of the CCM program, focused on continuing and improving the implementation of the programs and expanding the program across the province.

2.2 MANITOBA

The Domestic Violence Front End Project implemented in 2003 indicates both the possibility of improvement and the risk of recession.[353] That project involved aggressive case management by pre-trial co-ordinators: the time between an

351 Alberta Courts, "Court Case Management Program", online: Alberta Courts <http://www.albertacourts.ab.ca/provincialcourt/courtcasemanagement/tabid/331/default.aspx>.

352 For a summary of the performance metrics of Alberta CCM1 initiatives, see: Alberta Courts, *Court Case Management (CCM) Program Phase 1 Closeout Report* (30 September 2010), online: Alberta Courts <http://www.albertacourts.ab.ca/LinkClick.aspx?fileticket=TFcLwniYMNE%3d&tabid=331>.

353 Manitoba Courts, News Release, "National Recognition for Successful Court Delay Reduction Project" (31 August 2005), online: Province of Manitoba <http://www.gov.mb.ca/chc/press/top/2005/08/2005-08-31-01.html>. Also see: Manitoba Courts, *Pre-Trial Coordination Protocol* (12 February 2008), online: Manitoba Courts <http://www.manitobacourts.mb.ca/pdf/pre-tial_coordination_protocol.pdf>.

accused's first court appearance to entering a plea dropped from more than seven months to a low of two months. The efficiencies generated resulted in savings of approximately $120,000 in six months. The program was recognized by the Institute of Public Administration of Canada and by the United Nations.

In 2010-11, the Manitoba Department of Justice created a division called the Justice Innovation team, whose primary function is "examining opportunities to improve business processes initially related to criminal justice, to improve case velocity and to ensure a more efficient use of resources."[354] A new director was appointed in January 2012 and tasked with finding ways to minimize delays in court cases.[355]

Manitoba is exploring the integration of mental health services with criminal process and uses of technology in scheduling cases. [356] An example of employing the criminal process as an opportunity to intervene productively in an offender's life is the Winnipeg Mental Health Court that just recently opened in May 2012. If an offender qualifies and wants to participate in the program, he or she may enter a guilty plea. The offender will be granted a conditional release and must complete a course of treatment run by the Forensic ACT team, a part of the Winnipeg Regional Health Authority's community health services. Once the offender completes treatment, the Court may choose to stay charges or to recommend a community-based disposition.[357].

2.3 ONTARIO

Ontario's principal criminal justice system reform initiative of interest to the Review is JOT. The JOT website is a splendid example of transparency and accountability as it both describes the JOT initiatives[358] and progress towards their achievement. These include:

- Meaningful First Appearances, an initiative to give an accused more information about court processes so they are informed before they get to court. The purpose of this initiative is to increase the speed and effectiveness of criminal courts.
- Dedicated prosecution initiative, allowing Crowns to screen and take ownership of files, reducing the number of people reviewing and getting up to speed on a file and improving continuity.
- A Crown Access Commitment initiative to increase communication with defence and duty Counsel for the purpose of reducing appearances and resolving less complex cases more quickly.
- A streamlined disclosure process to generate an initial and much briefer disclosure package earlier in the process. A second, more detailed disclosure is made only if the matter goes to trial.
- Setting a standard number of appearances for most matters, particularly less complex cases that should not be taking up significant court time. After reaching the standard number, the case should either go to trial or be otherwise resolved.
- A direct accountability initiative, which essentially takes a restorative justice approach and recognizes that some low-risk offences are addressed more effectively outside the court process.
- Enhanced video-conferencing initiatives to reduce the number of appearances and time between appearances, particularly for in-custody accused.
- Bail enhancement initiatives to reduce the number of appearances to obtain bail, such as

354 Manitoba Justice, *Annual Report 2010-2011* (Winnipeg: Manitoba Justice, 2011), online: <http://www.gov.mb.ca/finance/pdf/annualrep/2010_11/justice.pdf>.
355 Paul Turenne, "Swifter Justice: Hamilton tasked with clearing cases quicker," *Winnipeg Sun* (13 January 2012), online: Winnipeg Sun <http://www.winnipegsun.com/2012/01/13/swifter-justice-hamilton-tasked-with-clearing-cases-quicker>.
356 Association of Canadian Court Administrators, "Court Process Transformation – Managing the Change", *Canadian Court Communique* (Summer 2012), at p. 12, online: ACCA <http://www.acca-aajc.ca/LinkClick.aspx?fileticket=-bibNBWIKIA%3D&tabid=189>.
357 Provincial Court of Manitoba, Notice, "Re: Mental Health Court" (2 April 2012), online: Provincial Court of Manitoba <http://www.manitobacourts.mb.ca/pdf/mental_health_court.pdf>.
358 Ontario Ministry of the Attorney General, "JOT Initiatives," online: Ministry of the Attorney General <http://www.attorneygeneral.jus.gov.on.ca/english/jot/jot_in_action.asp>.

better co-ordination of when and how accused persons are brought to the court.
- Initiatives to improve access to on-site legal aid.

During consultations it was reported that the integration of the various stakeholders—including prosecutors, defence counsel, police and staff at 57 courthouse locations, along with judicial chairs—achieved a significant change in professional culture. It has improved mutual understanding, improved professional relationships and generally enhanced a sense of common professional excellence. A wide spectrum of results has occurred, and the commitment of local leadership appears to have been central to success.

Another feature of the Ontario experience is that while the original 30:30 targets (30% reduction in time: 30% reduction in appearances) were set by the Attorney General, the successful recruitment of all stakeholders to full participation came at the cost of relaxing the original stated goals. My impression was that one cost of obtaining the participation of all sectors, including the judiciary, was that the initial goals were treated as aspirational only.

The Strategy focuses on court administration and reducing delay in the court system, as opposed to addressing the overall criminal justice system. The Strategy includes specific initiatives directed at meaningful first appearances, dedicated prosecution, crown access commitment, streamlined disclosure, appearance standards, increased availability of plea courts, direct accountability of the accused, enhanced video-conferencing, bail enhancements and on-site legal aid.

The Strategy was initiated by the Attorney General who set the target of a 30% reduction in time to disposition and a 30% reduction in the number of appearances in criminal matters in Provincial Court. The implementation of the strategy is co-led by Justice Bruce Durno, a judge and former Regional Senior Justice for the Central West region in the Ontario Superior Court of Justice, and Lori Montague, Acting Director and ministry lead for the JOT Strategy.[359] In addition, the Strategy is supported by an Expert Advisory Panel consisting of judges, justices of the peace, chiefs of police, defence lawyers, a criminology professor, the CEO of legal aid, a senior director of the National Judicial Institute, the Associate Deputy Attorney General Court Services, the Associate Deputy Attorney General Criminal Law Division and the Director of Correctional Services.[360]

Each of Ontario's 57 court locations has a local leadership team. These teams consist of judges, justices of the peace, defence counsel, crown attorneys, police, court services staff, duty counsel, corrections, victim service workers, legal aid and other organizations. They develop court process improvements to reduce times to trial and unproductive appearances, and they share ideas, learn from each other and implement new initiatives.[361]

In four years, Ontario's JOT Strategy has resulted in a 7% decrease province-wide in the number of court appearances required to bring a charge to completion.[362] In addition, there has been a slight decrease in the number of days to complete a criminal charge.[363] According to the Strategy website, straightforward non-complex cases are being resolved sooner and there have been more than 500,000 fewer court appearances in non-complex, non-violent cases since the Strategy began.

In addition to the statistics on improved court process, I also heard that leadership teams and

359 Ontario Ministry of the Attorney General, "Frequently Asked Questions," *Justice on Target,* online: Ontario Ministry of the Attorney General <http://www.attorneygeneral.jus.gov.on.ca/english/jot/faqs.asp>.
360 Ontario Ministry of the Attorney General, "Frequently Asked Questions," *Justice on Target,* online: Ontario Ministry of the Attorney General <http://www.attorneygeneral.jus.gov.on.ca/english/jot/faqs.asp>.
361 Ontario Ministry of the Attorney General, "Frequently Asked Questions," *Justice on Target,* online: Ontario Ministry of the Attorney General <http://www.attorneygeneral.jus.gov.on.ca/english/jot/faqs.asp>.
362 Ontario Ministry of the Attorney General, "Frequently Asked Questions," *Justice on Target,* online: Ontario Ministry of the Attorney General <http://www.attorneygeneral.jus.gov.on.ca/english/jot/faqs.asp>.
363 Ontario Ministry of the Attorney General, "Frequently Asked Questions," *Justice on Target,* online: Ontario Ministry of the Attorney General <http://www.attorneygeneral.jus.gov.on.ca/english/jot/faqs.asp>.

working groups have made progress toward less readily measurable goals such as restoring relationships between the judiciary, the prosecution and defence at the local level. The LSS of BC suggests that the Ontario strategy "offers an instructive example of how a centrally co-ordinated reform process can foster local efforts to improve the justice system."[364] Indeed, during consultations it was often suggested that grassroots-level leadership capable of carrying out innovative and flexible projects is an important component of any strategic management plan. This is particularly so when addressing issues such as domestic violence or mental health, where local teamwork with NGOs brings expertise and community sensitivity to bear.

The lessons learned from the JOT Strategy include an appreciation for the importance of strong linkages between the overarching plan for the system and grassroots or issue-specific teams that will be able to contribute their expertise and to carry out various elements of the plan. My understanding of that case is that, although goals were stated at the outset and the results have been reported, there was no plan put in place to meet the targets set by senior ministry leadership. Rather, the groups eventually came to be in control of their own progress and goals and were not required to identify changes that would be able to achieve those goals.

The JOT Strategy also offers another example of the benefits of a close working and planning relationship between the criminal justice ministries and the judiciary. The JOT Strategy confirms that joint leadership with the judiciary is not only beneficial but also appropriate in the Canadian context. That is, judicial leadership and participation in the JOT Strategy has not raised concerns about a conflict with the requirements of judicial independence. During my consultations, I heard that the leadership of the judiciary has been a critical component to the JOT Strategy's success in changing culture and relationships. Such leadership may be equally valuable in British Columbia.

2.4 NEWFOUNDLAND AND LABRADOR

In 2010, Newfoundland and Labrador implemented the case assignment and retrieval (CAAR) System.[365] The system schedules criminal trials and sentencing hearings in one central location and surplus-books trials. The system takes into account factors such as collapse rates, judicial resources, the likelihood of criminal charges proceeding and a particular counsel's probable actions. Routine cases, such as breaches, theft or impaired driving, are assigned the day before trial. Last minute adjustments may occur the day of trial. Court staff monitor trial readiness by contacting the parties on an ongoing basis. This requires a great deal of flexibility.

Since the implementation of CAAR, the Court is now focusing on minimizing unproductive appearances. For example, they introduced consent postponement applications so that counsel could arrange new trial dates with the Court Utilization Manager, rather than requiring a court appearance for an administrative function.

There was some resistance to the organizational changes effected by CAAR. For example, judges were required to move between courtrooms. They were resistant as their benches would not be organized similarly. In response, the Court set up literature organizers to organize benches in the same manner in every courtroom. Additionally, whereas Crown and Legal Aid Counsel previously were assigned to a particular courtroom and judge, they are now assigned to files. Since the implementation of CAAR, time to trial in the St. John's Provincial Court has been reduced from 12 to 24 months to 2 to 6 months.[366]

364 Legal Services Society, "Making Justice Work : Improving Access and Outcomes for British Columbians," *Report to the Minister of Justice and Attorney General The Honourable Shirley Bond* (1 July 2012), [unpublished] at p. 11–12.
365 Association of Canadian Court Administrators, "Court Process Transformation – Managing the Change", *Canadian Court Communique* (Summer 2012), at p. 16, online: ACCA <http://www.acca-aajc.ca/LinkClick.aspx?fileticket=-bibNBWIKIA%3D&tabid=189.>
366 Newfoundland and Labrador Department of Justice, *Annual Report 2010–2011* (St. John's: Department of Justice, 2011), at p. 32, online: Department of Justice <http://www.justice.gov.nl.ca/just/publications/2010-2011/Justice_Annual%20Report%202010-11.pdf>.

3. JUSTICE REFORM AND INNOVATION INTERNATIONALLY

Time and resources made a study of international developments impossible. However, during this Review the Ministry of Justice in the United Kingdom released its White Paper entitled "Swift and Sure Justice: The Government's Plans for Reform of the Criminal Justice System," which set out a program of reforms to the criminal justice system in England and Wales.[367] As well, their earlier reforms with the creation of a crime reduction board are informative.

3.1 NATIONAL CRIMINAL JUSTICE BOARD, UNITED KINGDOM

In 1997, the Labour Party, led by Tony Blair, took office in the United Kingdom. The various reforms initiated by Mr. Blair's government include a renewed national-level integration of criminal justice services. According to a later Strategic Plan for Criminal Justice, "effective joint working is necessary at all levels of the Criminal Justice System" so that offenders could be brought to justice efficiently, while victims and witnesses were well-served.[368]

A National Criminal Justice Board (NCJB) was established to assist criminal justice organizations in sharing their plans and co-ordinating operations. Participants in the NCJB included ministers of the Home Office,[369] the Department for Constitutional Affairs and Law Officers' Departments[370] together with the heads of main criminal justice agencies, the Association of Police Authorities and a representative of the judiciary.[371] In addition to the NCJB, local Criminal Justice Boards (LCJBs) brought together the chief officer of each criminal justice agency in local areas to lead joint and strategic operations. These LCJBs were seen as the "key drivers of cross-cutting criminal justice reform" and were supported by the NCJB.[372]

The criminal justice ministers on the NCJB were responsible for the delivery of certain targets, including bringing offences to justice and raising public confidence. The Board as a whole was responsible for monitoring progress towards these targets, holding agencies and areas of the justice system to account where performance fell short of expectations and finding solutions to problems as they arose.[373] The NCJB reported to the criminal justice system Cabinet Committee on its progress. The Cabinet Committee retained overall responsibility for delivery of criminal justice system targets.[374]

In its 2004 and 2008 strategic plans for criminal justice, the UK Home Office reported that the NCJB and LCJBs had yielded significant positive results. In 2004, the Home Office reported that partnerships between criminal justice departments had greatly improved and that the NCJB had provided "stronger leadership and close working between departments." This resulted in "sustained improved performance on our key targets to bring more offenders to justice and

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367 To read the White Paper, see: UK Ministry of Justice, *Swift and Sure Justice: The Government's Plans for Reform of the Criminal Justice System* (London: Ministry of Justice, 2012), online: UK Ministry of Justice <http://www.justice.gov.uk/downloads/publications/policy/moj/swift-and-sure-justice.pdf>.

368 UK Office for Criminal Justice Reform, *Cutting Crime, Delivering Justice: A strategic plan for criminal justice 2004-2008* (London : Her Majesty's Stationary Office, 2004), at p. 15, online: Official Documents Archive 2 <http://www.archive2.official-documents.co.uk/document/cm62/6288/6288.pdf> [*Cutting Crime, Delivering Justice*].

369 The Home Office is the United Kingdom's lead government department for policies on immigration, passports, counter-terrorism, policing, drugs and crime. Online: <www.homeoffice.gov.uk>.

370 In the United Kingdom, reference to the "Law Officers" is a reference to the Attorney General, Solicitor General and the Advocates General for Northern Ireland and for Scotland: <www.attorneygeneral.gov.uk/thelawofficers/pages/default.aspx>.

371 *Cutting Crime, Delivering Justice,* at p. 15, online: Official Documents Archive 2 <http://www.archive2.official-documents.co.uk/document/cm62/6288/6288.pdf>.

372 UK Office for Criminal Justice Reform, *Working Together to Cut Crime and Deliver Justice: A strategic plan for 2008–2011* (London : Her Majesty's Stationary Office, 2008) at p. 10, online: Official Documents <http://www.official-documents.gov.uk/document/cm72/7247/7247.pdf>.

373 *Cutting Crime, Delivering Justice,* at p. 15–16, online: Official Documents Archive 2 <http://www.archive2.official-documents.co.uk/document/cm62/6288/6288.pdf>.

374 UK Criminal Justice System, *National Criminal Justice Board,* online: The National Archives <http://webarchive.nationalarchives.gov.uk/20100402221729/lcjb.cjsonline.gov.uk/ncjb/>.

raise public confidence."[375] In addition to improved working relationships, crime had fallen by 25% since the government took power in 1997, a greater percentage of offences were brought to justice, and public confidence in the justice system had begun to improve.[376]

The Home Office particularly noted the important role that the judiciary played in its participation on the NCJB:

> The active support and participation of the judiciary, in the magistrates' courts and in the higher courts, are crucial to the delivery of this strategy, as they have been in delivering the improvements achieved so far. Issues in which they have played a major role are: ... improving joint working between criminal justice agencies, particularly through membership on the National Criminal Justice Board.[377]

It appears that after some time following a change of government in the United Kingdom, the NCJB had been removed and replaced with other national agencies.[378] Local crime boards appear to remain in some areas.

The UK's NCJB and LCJB model provides a useful example for several reasons. First of all, it is a relatively successful example of higher level strategic co-ordination of justice system participants, and it demonstrates that working relationships among justice system participants can be improved by a multi-participant planning process. Also, it is encouraging to see that the increased collaboration experienced through the NCJB and LCJB model coincided with reductions in crime, increases in public confidence and increases in offences being brought to justice. These improved working relationships and improvements to the justice system are also goals that our system is working towards, and this example provides a potential model for achieving those goals.

I also take from the UK experience an appreciation for the great benefits that may come with the participation of a representative of the judiciary on a strategic planning body. I am encouraged to see that it was possible for the judiciary to participate while still respecting judicial independence. The courts play a vital role in the delivery of criminal justice and, therefore, their involvement is critical to the proper co-ordination of system-wide management.

3.2 WHITE PAPER

The differences with British Columbia's system are many and include differences in historical resourcing, demographics, size, historical patterns of violence and crime, local government structures and many other material points. Despite this, the UK White Paper deserves careful consideration in the preparation of British Columbia's White Paper. It is reassuring that the same issues raised in this Review have been independently considered important in the UK White Paper. For our purposes the many proposals to emphasize outcomes, develop expertise for particular problems, achieve uniform timeliness, and achieve a dramatic change in legal culture all support the scale and depth of change recommended by this Review.

3.3 DIAGNOSIS

The Paper cites many of the same concerns expressed in the *Green Paper* and elsewhere

375 *Cutting Crime, Delivering Justice,* at p. 47, online: Official Documents Archive 2 <http://www.archive2.official-documents.co.uk/document/cm62/6288/6288.pdf>
376 *Cutting Crime, Delivering Justice,* at p. 9, online: Official Documents Archive 2 <http://www.archive2.official-documents.co.uk/document/cm62/6288/6288.pdf>.
377 *Cutting Crime, Delivering Justice,* at p. 19, online: Official Documents Archive 2 <http://www.archive2.official-documents.co.uk/document/cm62/6288/6288.pdf>.
378 For example, the UK National Crime Agency, with greater emphasis on policing and organized crime: UK Home Office <www.homeoffice.gov.uk/crime/nca>.

regarding British Columbia's system. The White Paper criticizes the UK system for slow operation, frequent delays, lack of transparency, complexity and bureaucratic process, failure to make the best use of its resources, a decay-tolerant culture, absence of systematic discipline, lack of accountability and involvement of the public, lack of transparency and responsiveness, poor use of technology, wasted investment and high rates of recidivism.

Some of these represent criticisms of the failure of the system to fully achieve goals set by earlier governments. Significant departures from the approach taken by the earlier administration include a priority placed on respecting local priorities and providing for greater professional discretion. The White Paper proposes a very long list of changes that will affect every aspect of the UK system.

3.4 OUTCOMES

Troubled Families is an example of a collaborative approach to reach better outcomes for very troubled people. The proposal builds on the recognition that very troubled families present a number of challenges but also can respond to intensive intervention. Rather than a range of different agencies working in silos to tackle each of the issues that troubled families experience, the program will incentivize local authorities and their partners to deal with each family's problems as a whole and put in place whole family interventions. This initiative will invest nearly £450 million over three years, targeting the 120,000 most troubled families. This is aimed at improving public safety for the community and presents an array of social, educational and economic outcomes for adults and children in these families.

3.5 TIMELINESS

The White Paper proposes that the criminal justice system be able to respond in a flexible way to fit the needs of victims and communities and to ensure that offenders quickly face the consequences of their actions. This may require longer opening hours and a change in the culture of the criminal justice system, delivering services when they are needed, rather than when it is convenient for providers.

Up to 100 magistrates' courts are sitting on Saturdays and Bank Holidays, reducing delays and delivering swift, sure, flexible justice. They will continue to test innovative approaches to court sitting times, assessing the merits of more flexible sittings, including early morning, evening and weekend sittings for different types of hearings.

The judiciary is leading the Early Guilty Plea scheme for Crown Court cases. In these pilots, Crown Prosecution Service prosecutors identify cases in the Crown Court where a guilty plea is likely, which are then listed for an early hearing. There is a presumption that defendants who plead guilty at that hearing will receive the maximum available discount on their sentence, while those who subsequently change their plea to guilty are likely to receive a reduced discount, depending on the stage at which it is offered.

Stop Delaying Justice is an initiative developed by the judiciary which aims to tackle delay and inefficiency through stronger management of cases, ensuring that the basis of the defence, and the evidence to be challenged, is clearly understood.

3.6 USE OF TECHNOLOGY

The Paper proposes the following innovations in the use of technology as a means of improving the accessibility of the criminal justice system to victims and communities:

- Using text messages and email to provide victims and witnesses with updates on the progress of a case, and to provide reminders to them, and to defendants, about upcoming proceedings.
- Using social media websites to provide real time updates on the work of the criminal justice agencies. Avon and Somerset Constabulary, for example, have launched the TrackMyCrime

initiative, allowing victims to track the investigation of their crime as it happens.
- Providing information on the outcome of proceedings and sentencing decisions, on local cases in real time.

3.7 TRANSPARENCY

In January 2011, the Home Office and National Policing Improvement Agency launched online street-level crime data for every community in England and Wales (www.police.uk). The website has received over 50 million visits since its launch. It now includes information about justice outcomes so that the public can see what happens after a crime is reported in their area.

They are also committed to routinely publishing more information about the local performance of the criminal justice system. Over 2011/12, they used the Open Justice microsite (http://open.justice.gov.uk) to make available for the first time detailed information about:

- Individual-level anonymized reoffending and sentencing outcomes;
- Sentencing data for every magistrates' court and Crown Court;
- Timeliness data for criminal, civil and family courts so that local people can see how long cases take to progress through the system; and
- Re-offending data for every Probation Trust, local authority and prison establishment.

They have also produced additional scenarios for the popular online *You be the Judge*, an interactive tool which helps people to understand the sentencing process. These will be launched during this summer.

This White Paper demonstrates that in some respects British Columbia is well ahead of the practices in the United Kingdom. Our technology platforms, for example, appear to be well ahead of those in the UK It also demonstrates that we are not alone in recognizing the need for a far more effective criminal justice system.

Modernizing British Columbia's Justice System

Minister of Justice and Attorney General

Terms of Reference for the Chair, Justice Reform Initiative

February 2012

Introduction

A well-functioning criminal justice system in accordance with the rule of law contributes directly to the health of society and is an essential component of our democracy. British Columbians expect the decisions that are made and services that are provided to be fair, timely, and accessible. They look to the judiciary, police, prosecutors, corrections, court staff, defence counsel and government to ensure that the values of justice and safety have the broadest possible reach.

Criminal justice is not immune to change in society. The nature of crime, the laws that govern and condition behaviour, the knowledge of why crime occurs and how it may be reduced, and the skills and resources that are needed and available, are not static. Understanding how the system works, and how it is changing, is essential to preserving the core values of criminal justice.

Further, criminal justice is but one component of the larger justice system, which also encompasses civil and family matters. Not all disputes are resolved by courts; tribunals resolve others and in yet others statutory powers of decision are exercised. The profile of private mediation, arbitration and other dispute resolution models is increasing. The effectiveness and efficiency of the justice system in all its manifestations in delivering high quality, accessible and timely justice is critically important in supporting families and a vibrant economy.

While the responsibilities and values are clear, there is currently little consensus amongst participants over the most significant trends and challenges in criminal justice, nor often on the causes of those trends. Reaching consensus requires a framework. However, developing this framework involves a nuanced and sensitive approach. The public interest is best served if government does not seek to unilaterally impose a solution. It is preferable for government to facilitate a rational, prudent and well-considered process for developing new approaches, based on several key beliefs:

- Progress requires the full engagement of the executive and judicial branches of government, and other participants, recognizing the public interest in improving operations of the system

- Our work must be based on an understanding of, and respect for, constitutional independence of courts and prosecutors while recognizing that the actions of each participant affect other participants
- Time is of the essence in understanding and developing solutions to current pressures
- Progress is wholly dependent on our ability to reach a shared, empirical understanding of our key challenges
- Consensus around next steps will enhance both the chances of achieving success and the level of public confidence in the system and its governance

Rationale

Progress in the last decade

In the past decade there have been a number of advances in the understanding and management of British Columbia's criminal justice system. Major changes have been made to the way in which court, police, prosecution, and correctional data is captured and maintained. Problem-oriented approaches have been used to define and address a number of acute issues. Innovation has occurred through initiatives focused on community-based courts, case management, prolific offending, and evidence-based approaches to offender management and interventions. This work has also served to highlight for participants the interconnected nature of the way the system works.

Reforms in Other Parts of the Justice System

Over the past number of years some reforms have been made to the civil and family justice areas. On civil matters, new Supreme Court Civil Rules came into force in 2010. In family matters, the Legislature recently passed the Family Law Act, which will modernize the resolution of legal matters between spouses on the breakdown of relationships.

Innovations to benefit the whole system

Adult and youth criminal matters in the Provincial Court account for fully one half of all annual cases in British Columbia's courts. Meaningful reforms to the criminal justice system will not only reduce delays and enhance timelines to justice in these matters, but also have the potential to create similar benefits in the areas of civil and family justice by creating additional room in the system for the courts to schedule and hear these matters sooner.

The current paradox

While innovation and progress have been achieved in discrete areas, and while the fundamentals of the system, its integrity and its personnel in fact remain strong, the basic indicators of health point in contradictory directions. The paradox for British Columbians is that in some respects the data would suggest that the observable 'business' of criminal justice is down, but timeliness remains a significant challenge most notably when an accused person's right to a trial within a reasonable time is at risk. Resolution of this paradox is clearly in the public interest and in the

interest of all participants. Coming to terms with why this paradox exists, and how we should respond, is critical if our capacity to deliver justice and safety to citizens is to be maintained.

Creating a common space to understand the system

We must find a framework in which independent participants can have a common dialogue and create a shared understanding of how the system functions, its strengths, and its challenges. This is both obvious and difficult, due to the broad range of functions, training, experience, and traditions across the sector, the necessary safeguards, and the high stakes of personal liberty and public safety with which justice personnel deal every day.

The way forward requires a careful balance between the collective need to understand how the system functions and the preservation at all times of the independence of standing and decision-making which applies to some of the system's participants.

A Review to Establish the Key Priorities

This document proposes an initial review to recommend what practical mechanisms should be established to promote continuous improvement within British Columbia's justice system. The review will have both a short term and longer term aspect. In the short term, the review will determine priority areas for immediate action. For the longer term, the review will focus on the practical structural or institutional changes that should be made to foster constitutionally appropriate collaboration among the various participants in the criminal justice system and promote a culture of continuous improvement.

The review is to be carried out by Geoffrey Cowper, QC as Chair, Justice Reform Initiative.

Mandate

The mandate of the Chair, Justice Reform Initiative will be to report and make recommendations on:

- the major issues affecting timely justice in criminal matters;
- steps to ensure that criminal justice reform initiatives already underway are having the desired outcomes;
- immediate measures which could be taken to improve outcomes in the criminal justice system;
- the roles of the various justice system participants and how constitutionally appropriate collaboration and cooperation can be fostered, specifically
    - those matters in which each institution, for reasons of independence, should have exclusive decision-making authority;
    - those matters in which each institution, for reasons of best expenditure of public resources, should have exclusive decision-making authority;

  - in the case of independence and best expenditures, whether in such cases consultation with other participants is required, is desirable or is not required;
  - those matters on which justice agencies should have shared or collaborative decision-making authority; and
  - practical and effective institutional or structural mechanisms by which consultation and shared decision-making can best take place

- steps, including legislative measures if any, within the constitutional authority of the province that can and should be taken to give effect to the recommendations.

Periodic updates on the work of the Justice Reform Initiative are to be released to the public by the Chair, Justice Reform Initiative.

The completed report is to be submitted by the Chair, Justice Reform Initiative to the Minister of Justice and Attorney General no later than July 2012.

In preparing the report the Chair, Justice Reform Initiative is requested to:

- consult with the judiciary, defence bar, Crown Counsel, legal aid, police and corrections (at the federal level where necessary);
- provide an opportunity for public input;
- view transparency of justice system outcomes as essential;
- articulate how performance measures by which the system can be accountable can be established and how public assurance of results achieved can be provided;
- consider the experience of other jurisdictions in addressing these matters.

BC JUSTICE REFORM INITIATIVE

REVIEW STAFF, APPROACH AND METHODOLOGY

Introduction

This Review into British Columbia's criminal justice system is an unusual exercise and accordingly it may be important to outline the approach that has been taken to the mandate, the methodology which has been followed, and some observations on the possible strengths and limitations which should be taken into account by the reader.

The obvious features of the Review which have framed the execution of the work include:

1. The publication of a Green Paper which highlights:

   (a) the need to modernize the criminal justice system;

   (b) the suggested paradox of declining crime rates and increasing costs;

   (c) experience of failed initiatives;

   (d) apparent barriers to change within the culture of the system, including resistance to systems thinking, dependence on subject matter experts, the interpretation of independence by the various independent participants and the complexity of the system;

   (e) the existence of a substantial number of ongoing, proposed, and contemplated initiatives.

2. The decision to obtain an independent view by an experienced practitioner who is not a career criminal law practitioner.

3. The need for the Review to be completed in a very short timeline to enable government policy processes to be completed.

4. The request for two other reports on charge approval standard and process by Gary McCuaig, Q.C., an experienced Alberta prosecutor, and the Legal Services Society, on the subject of potential legal aid reform

5. The promise to receive and consider the Review and to publish a White Paper reflecting government policy.

Review Staff

I was fortunate to have the assistance of experienced and capable people in the execution of this Review. In particular:

Alison MacPhail contributed greatly from her expertise and experience as a justice system manager and leader with experience in both criminal justice reform and operations, and as a Deputy Minister with the former Ministry of Solicitor General and Public Safety.

Emma Dear served as the Executive Director for the Review.

Jennifer Chan conducted research and assisted in writing the Report, on her way to graduate work on efficiencies in the legal system.

Fasken Martineau LLP kindly donated not only much of my time for the Review, but also the able research assistance of Samantha Chang, Martin Ferreira-Pinho and others.

I am obliged to Richard Therrien and Eve Rickett for their editorial assistance.

Approach

As a result of the factors discussed earlier, the following approach was adopted:

1. To maximize the advantage of independence, consultations were taken on both a public and confidential basis, with individuals and groups.

2. A substantial effort was undertaken to encourage the development or acceleration of internal reform processes by justice participants, to address the challenges set out in the Green Paper and the challenges to the system as they saw them.

3. An adjustment of the work to fit the available time, since the potential scope of the mandate could occupy a substantial policy commission for a substantial period of time, but only at the cost of distracting both ongoing efforts and displacing existing leadership.

4. Deference to internal processes where appropriate.

5. Avoidance of surprises, to maximize the chances that recommendations are fully informed and to receive at least some level of criticism or comment by existing leadership and stake holders.

6. Respect for subject matter expertise, experience and commitment of those working within the system.

Methodology

The Review adopted a methodology composed of three phases, which were as follows:

7. Phase 1: We endeavoured to meet with representatives of all of the participants within the criminal justice system and members of the public. We were fortunate to receive input and suggestions from a very wide variety of individuals, professionals and institutional representatives.

8. Phase 2**:** We concentrated on generating and consulting on concrete proposals for reform. This phase included consultation tables which addressed proposals to improve

coordination and collaboration within the system, to address the problem of large case management, to consider reforms to the role of victims in the system, to consider reforms to the relationship between the police and crown counsel, and to consider an improved relationship with the public.

9. Phase 3**:** In this phase we developed proposals based upon the consultations we had conducted as well as the input we received from experts and through our literature review.

Strengths and Limitations of the Review Process

10. Strengths

The appointment of an independent reviewer encouraged candid conversations that permitted the exploration of concerns not normally expressed within the system.

The independence of the Review encouraged proposals that were not wedded to existing government policy, existing leadership direction or existing structures.

The candid, and in places blunt, language of the Green Paper provoked a determined defence of some aspects of the system, while at the same time provoking and accelerating the development and determination of leaders within the system to make real and constructive changes.

11. Limitations

There are obvious limitations to what the Review has been able to accomplish and which should be borne in mind in the development of the White Paper and in the consideration of next steps. These include:

(a) *Time:* Notwithstanding the number of meetings and consultations held, it is clear that the full development of some of the proposals that have come from within the system, or which are proposed for consideration in this report, require careful consideration and development. Indeed, some of these considerations would require a more disciplined process of consultation to ensure the necessary acceptance by those being asked to carry out proposed reforms.

(b) *Depth of Institutional Understanding:* This Review has been asked to take a system-wide approach. Of necessity, this means that much of the detail and organizational structures that would otherwise be considered for the final outline of a reform proposal have not in this case been considered. In any event, it is my view that those detailed considerations are best left to leaders within the system.

(c) *Internal Acceptance:* The successful execution of most of these proposals depends upon changes to the culture of both the criminal system of justice and some of the features of the cultures currently in place within the institutional participants. Culture change of this type cannot be carried out by an independent reviewer but must be carried out by the leadership of the organizations in a manner that is best tailored to the history, traditions and discipline within that organisation.

SCHEDULE 3

BC JUSTICE REFORM INITIATIVE

FIRST INTERIM REPORT BY THE CHAIR – MARCH 22, 2012

Beginning the Review

1. Introduction

The purpose of this report is to update the Minister of Justice and Attorney General and the public on the progress made so far in this review of B.C.'s criminal justice system.

This report addresses the steps taken to date, the plan for the Review going forward to completion this summer and some preliminary observations about the character of the issues facing B.C.'s criminal justice system.

The Terms of Reference for the Review have been finalised and are now publicly available. Although the Terms of Reference are restricted to criminal justice issues, I have received comments respecting family law and other areas of the system of justice which may bear consideration. For those matters that are outside of the Terms of Reference and with the consent of the sender I will forward concerns or proposals to the Ministry for its consideration.

I have been overwhelmed by the passion and care people have shown towards the challenges of modernising our system of criminal justice and the need to preserve and uphold its core values. Across the system the institutional participants acknowledge that their distinctive roles must serve the public interest in a manner that is complementary and effective. The private bar has expressed openness to improvements in the system that is consistent with effective representation of their clients. I have met with over 60 people since the announcement of the Review and expect this pace to continue until the summer months.

The problems faced by the system have not been ignored and there are a number of initiatives, reforms and proposals under development or being piloted. Hopefully many of these will prove constructive and provide both improved results and lessons for the future.

It is obvious that there are several independent participants in the criminal justice system. This is for important and well-established reasons. Equally obvious is that the participants are dependent on each other: this interdependence is widely acknowledged but the lack of effective coordination has frustrated some of the measures intended to achieve enduring and effective change.

The Green Paper has raised important questions about the best means of achieving reform in the public interest in the context of the structural independence found throughout the system. The Green Paper's focus on system-wide efficiencies and outcomes is very different from previous efforts and for that reason challenges everyone involved in the

conversation. That conversation is now well underway and I am confident the Review will help us all better understand how both independence and interdependence must be taken into account in improving British Columbia's criminal system of justice. The suggestions received to date make it apparent that the menu of possible recommendations span the spectrum from detailed changes in process to structural reform through legislative change.

2. **Plan for the Review**

The Terms of Reference present the Review with three basic tasks. First, the Review must address whether there are any measures that could be implemented in the short-term to improve outcomes in the system. Second, the Review must consider the broad questions of both framework and function that are raised for consideration in the Green Paper. Third, the Review should recommend measures for consideration and further development.

The Review will be carried out in three phases. The first phase will be to meet with the participants and public. These consultations will include learning from the participants what measures in their view would achieve more effective process and better outcomes.

The second phase will be to both generate and facilitate the development of concrete proposals for reform. I hope to have received all submissions and proposals by May 30, 2012.

The third phase will be to assess possible measures and report in July, 2012.

These phases will no doubt overlap and contribute in different ways to the final report. In all this work I will strive for a transparent process that respects the expertise within the community and those directly affected and also provides an opportunity for input from the public.

3. **Steps Taken To Date**

(a) Stakeholder Consultations

In order to accomplish the Review in the time available I moved immediately to meet with representatives of the judiciary, defence bar, Crown counsel, legal aid, police and corrections. I have now met on a preliminary basis with representatives of each of these participants.

I have met with members of the government and opposition caucuses and have extended an invitation to meet with MLA's individually or with their communities, as time permits.

I have also benefitted from preliminary meetings with representatives of the Law Society of B.C., the Canadian Bar Association, and the Trial Lawyers of British Columbia.

I have also received extensive briefings on the work of the Ministry of Justice.

I have met with representatives of the Legal Services Society, especially with a view to co-ordinating their report with the Review. Gary McCuaig, Q.C. and I have met on several occasions to discuss his upcoming report on the charge approval process and standard.

The purpose of these initial meetings has been to obtain an orientation as to how the various participants in the system of justice view the issues raised by the Green Paper, to obtain a better understanding of current trends and practices, and to identify what changes are already underway.

I have been pleased with the openness to reform demonstrated in all these initial consultations. The problems faced by the system are acknowledged by all the participants and there is widespread recognition that many of the problems have proven recalcitrant. Indeed there are many measures being piloted, or in preparation already. I am confident that the opportunity for creative solutions afforded by the Review has been taken up by those with roles in the system and there will be many ideas and suggestions deserving careful consideration. The public character of the Review and the plans for public input and consultation will encourage the involvement of members of the public.

(b) Public Consultations

(i) *Website*

The Terms of Reference request that the Review provide an opportunity for public input. Very early on I determined that a website and blog offered a new means of engaging both those involved directly in the system and members of the general public.

On March 2, 2012 the Review website was launched to provide the the public and stakeholders with information about and updates on the Review, and as a forum for providing input. It can be found at www.bcjusticereform.ca. It hosts the interactive Chair's blog and also offers a vital opportunity to share the resources made available to us.

Some issues such as timeliness may be amenable to general feedback and we plan on providing online surveys on certain topics. Although this will not be scientifically valid it may provide an easier means for people to provide their input.

(ii) *Blog*

I have initiated (for me a first) a Chair's blog which I hope will afford a more informal and ongoing conversation. The Review also has a facebook page for the distribution of my blog postings and any comments on those.

The blog is intended as a means to address the system issues and solutions which are the subject of the Review and is not a vehicle for individual complaints or criticisms of particular individuals.

(iii) *Submission forms*

We are already receiving a steady flow of submissions through the Review website and hope that it will continue as we progress to the report. People have taken up the offer to provide their submissions in whatever form they are able and a convenient feedback form has been made available on the website. We will encourage everyone interested in making submissions to do so by May 30, 2012.

(iv) *Meetings*

The Review has received many requests for meetings and I am working hard to meet with as many as possible in the time available. I have been reflecting some of the input received in these meetings and conversations on the Chair's blog.

I am concerned that the particular needs and opportunities that exist in the regions outside the Lower Mainland be identified and have planned visits to the Interior and the North.

(c) Research

There is already a developed body of information and opinion that has been made available to the Review. I observe that the Ministry has launched a new data dashboard at www.JusticeBC.ca, where the public can access court statistics.

The Review will conduct a literature review and some jurisdictions have been recommended as sources of best current practices. I have plans to meet with several of the academic commentators in this area from B.C. and elsewhere.

4. **No Shortage of Problems and Proposals**

The complexity of the justice system can overwhelm an assessment. Many of the problems faced by the system have been recognised by responsible people throughout the system. Various initiatives or pilots have been launched or are being developed. Innovation has not only arisen from institutional sources. For example, there are several Court-based initiatives that have been championed by individual judges such as the Domestic Violence Court in Duncan.

The Criminal Justice Branch has over 30 projects that are either proposed or ongoing; many of these are aimed at addressing the issues identified by the Green Paper.

The various police forces have numerous projects and initiatives underway. These are aimed at reducing crime and the social effects of crime on our society. For example the Vancouver Police Department and several other police forces in B.C. have had a chronic offender initiative aimed at focussing on the small number of offenders who account for a large number of offences and represent substantial risk and property loss to the community.

SCHEDULE 3

The Corrections Branch has a pilot program which provides early risk assessments of accused individuals to assist the Crown in its evaluation of whether alternative measures to the formal court process may be appropriate for the offender, consistent with the law and public safety.

The Review will include a focus on the framework within which these initiatives are intended to improve function and the best means of enhancing policy and program development, testing and objective assessment.

5. **What systemic obstacles and opportunities exist?**

Various committees and working groups have been put in place to bridge the perspective of the various participants, but I also have been told these means have not succeeded in achieving well coordinated responses to the challenges facing the system.

The important work that remains is to seek to better understand the various factors that have contributed to the current situation and to assess what measures, both systematic and particular, would improve the process and outcomes of the system.

6. **Closing note**

The preliminary work of organising the Review and completing a preliminary scan has been completed. I look forward to broadening the conversation around the issues raised by the Green Paper and the community and identifying possible measure for constructive reform. I anticipate my next report will address the measures already underway and whether there are any measures I can recommend for immediate implementation.

Geoffrey Cowper
Chair, BC Justice Reform Initiative

March 22, 2012

BC JUSTICE REFORM INITIATIVE

SECOND INTERIM REPORT BY THE CHAIR – JUNE 22, 2012

Designing a Justice System for the 21st Century

Introduction

This second interim report provides an update on the progress of the Review. The First Phase of the Review was focussed on obtaining the broadest possible input from participants in the justice system and from the public concerning the criminal justice system in British Columbia. Well over 100 submissions have been received to date, and I have been able to meet with several hundred individuals and small groups throughout the province. Phase Two, nearing completion, is focussed on obtaining concrete suggestions for reform and consulting with the community regarding both proposals for reform and priorities for implementation. Phase Three, the Final Report, to be delivered before the end of July, will include both near-term and broader recommendations and proposals. The broader recommendations will require further study and development before implementation. I also briefly outline some of the many issues raised during my consultations with stakeholders and the public.

A Justice System for the 21st Century

There is an enduring consensus concerning the two fundamental goals for our criminal justice system: a safe community, and the administration of justice according to law. While there is general agreement about where the current system is falling short of our shared expectations, there is also more debate about the roles and responsibilities of institutions regarding public safety and fairness, and about the best possible solutions.

The proposals I have received over the past several months have one or both of two fundamental characteristics; some urge a return to the best elements of the past, and others wish to incorporate the best available systems-thinking and technologies that characterize contemporary life and culture.

Many Crown counsel, defence lawyers, judges and others who were active when early trial dates were the rule, observe that a significant number of the current problems would fall away if every accused were entitled to trial within a few months. At the same time, the expectation of the effective use of technology and modern systems-thinking is nearly universal. In considering how to get to a system with shortened timelines, modern approaches to systems and technology invariably frame the discussion.

When reduced to fundamentals there is little friction between the conservation of the fundamentals of a sound criminal justice system, and reforming the current system to better achieve expectations of modern processes that improve public outcomes. There is good reason to hope that sound proposals will find general acceptance by those who recall better times, and by those who desire modernisation.

SCHEDULE 4

Consultations to date

Over the past 18 or so weeks, I have had the benefit of either meeting or speaking with hundreds of people throughout the province and across the country. I have conducted or participated in roughly 100 in-person and telephone consultation sessions attended by several hundred people, varying from one-on-one meetings to larger groups of 20 or more. I have consulted throughout greater Vancouver, and travelled to Victoria, Kamloops, Kelowna, Prince George, Abbotsford, Nelson and Campbell River. In addition, I have conducted telephone consultations with stakeholders from other communities, and have received written submissions from a wide range of organisations and individuals via our website, e-mail, surface mail or hand-delivered.

The people I have met with include members of:

- Provincial Court, Supreme Court and Court of Appeal of British Columbia
- all branches of the Ministry of Justice
- Legal Services Society
- RCMP
- Municipal Police Forces
- Canadian Bar Association, BC Branch
- Law Society of British Columbia
- Native Courtworker and Counselling Association of BC
- Trial Lawyers Association of BC
- Crown Counsel Association
- B.C. Government and Service Employees' Union (BCGEU)
- B.C. Civil Liberties Association (BCCLA)
- British Columbia Bar
- NGO sector
- Restorative Justice Organisations
- Victim Services Organisations
- Vancouver Board of Trade
- Academics from the University of British Columbia, Simon Fraser University, University of the Fraser Valley and the University of Toronto.

I have also met with experts in the fields of business processes, systems analysis, fetal alcohol spectrum disorder, mental illness and addictions.

I have been impressed and inspired by the level of expertise and appetite for reform in all these communities.

Over the last week I have held a number of consultation sessions focusing on specific topics including strategic coordination of the criminal justice system, large case management and the role of victims in B.C.'s criminal justice system. Further sessions discussing police/crown interface and the role of the public are planned.

I have received submissions from more than 100 institutional stakeholders and members of the public. I had originally requested those interested in making a submission do so by the end of May; however in preparing my report I will endeavour to consider any submission received prior to June 30, 2012.

Shared Expectations for the Criminal Justice System

In meeting with stakeholders and the public, I repeatedly heard the following expectations for the criminal justice system:

Fairness and Justice

British Columbians expect our system of justice to be fair and just. Justice requires that fairness be evident throughout the system, including: the investigation of criminal events; the consideration of charges; the consideration of guilt and innocence; the restrictions imposed on a person's liberty; and the availability of programs that enable offenders to realise a law abiding and valued place in the community.

Timeliness

In a timely system many goals can be achieved. The public is satisfied that reports of crime are taken seriously and something is being done about them. It has been clearly demonstrated that timeliness of apprehension and sanctions is a critical element in affecting the behaviour of those who break the law. For those at a low risk to reoffend, the sooner the charge reaches resolution, the greater the likelihood that they will successfully reintegrate into the community. Professionals throughout the system, including police officers, sheriffs, court staff, Crown, corrections professionals, lawyers and judges, take pride in moving cases along, when less of their working lives is occupied with administration and process. When trials are necessary and realized in a timely fashion, victims and witnesses do not have to strain their recollection of events, lawyers don't have to prepare time and again, and the community sees a resolution.

Expertise

We have all come to expect that problems will be addressed with the best methods and up to date expertise available. Stakeholders and the public alike expect that solutions will incorporate the best learning and benefit from an appropriate level of expertise in those charged with important public duties.

Responsiveness

The types and levels of crime vary from time to time and from place to place. The public expects that our criminal justice system will respond to these changes and not be overwhelmed by them.

Cost Effective and Accessible	People recognise that we are living in times of public restraint and that this reality is unlikely to change soon. At the same time the public has high expectations that public funds will be spent in an expert manner and that the justice system will demonstrate the sound allocation of available resources, and work effectively and efficiently.
Respect	The justice system must demonstrate that it is respectful of everyone affected by it. This includes victims, witnesses, participants in the system, and both accused persons and offenders. Respect requires a recognition that the system of justice is administered in the public interest.
Effective Coordination of Services	The public expects the various parts of the criminal justice system to be appropriately and effectively coordinated.
Public confidence	The public needs to have confidence in the criminal justice system. Members of the public frequently defer to the expertise of those in the system. However, when common sense is offended, private reservations are reinforced and public confidence is significantly reduced.

This is not a comprehensive list of expectations for the criminal justice system, and undoubtedly reflects the circumstances of the Review, but each of them has validity and requires consideration in the development of solutions.

Systems Approach to Criminal Justice Management

Over the past fifty years systems thinking has inundated both business and government. Many of us with law degrees are sceptical of—if not downright hostile to—the application of this approach to legal systems. In my consultations I have observed that some participants do not view themselves as being any part of a system at all. In what ways is systems-thinking appropriate to achieving the ends of justice? One definition of system is

> *A set of things working together as parts of a mechanism or an interconnecting network; a complex whole.*

By any reasonable definition there is a criminal justice *system*, although its boundaries and over-all goals are open to reasonable debate.

A systems analysis is beneficial where the final outcome of the system is more meaningful than the individual results produced by the system's components. There is a consensus that the justice system indeed operates as a system in which many important participants have effects on one another's work and outcomes for victims, accused persons and the public are influenced by these complex relationships.

Some obvious examples can be shortly stated. When police investigate crimes, they must rely on Crown prosecutors to approve charges and bring cases to trial. The system relies on defence counsel to act fearlessly in the interests of the accused. We all count on the judiciary to interpret and apply the law to the facts. The judiciary in turn relies on court and administrative staff to assist them. The senior levels of government properly provide policy direction, but depend on many justice participants to realise those policies. No single participant of the justice system is able to achieve the public safety goals and the fair and just results expected of the justice system.

The reference to "silos" in our consultations has been legion. While "silo thinking" is not surprisingly applied to other institutions, it also frequently appears in conversations with participants when discussing their own role and function. The desirability of coordination and mutual support amongst the various participants in the criminal justice system is not new, but there appears to be a consensus that efforts to address this have not been as successful as needed.

The absence of over-all strategic planning and lack of stated common priorities is a frequently raised concern. In the coming weeks, I intend to consider how a systems approach to the criminal justice system might realise improved processes and outcomes. This may include consideration of the following:

- What are the boundaries of the system?
- Should there be a common strategy for the system, and who should be responsible to develop it?
- Can the interface between the participants of the system be improved?
- Do the roles and responsibilities of the various institutions in ensuring safe communities and guaranteeing fair and just processes need to be clarified or changed?
- How is success to be measured and how do we ensure reliable reporting to the public?
- Are there improvements to the managerial capacity within existing institutions that would be beneficial?

I look forward to upcoming discussions and consultations on these challenging topics.

Some Elements of Success

In addition to considering how the criminal justice system may be better managed as a "system", several other potential elements of success have been suggested to me during our consultations.

Evidence-based Decisions

The complexity of the justice system can make it difficult to base management decisions on facts. Many have commented on the use of "anec-data" (anecdote offered as data) in conversations concerning the justice system. We have one of Canada's best data systems and, as a result of recent substantial investments, we should see significant improvement. Using this data to inform sound decision making and to monitor

performance and increase transparency should be part of any sound proposal.

Expertise

The courts have recognised the usefulness of building expertise around particular problems through the development of initiatives like the Downtown Community Court, pre-trial management for large cases, and the domestic violence courts on Vancouver Island and in Kelowna. Our community is accustomed to receiving specialised expertise in almost every work and profession, and the general expectation of expertise needs to be acknowledged in developing new approaches.

Appropriate Incentives

The justice system ought to be organized so that participants share incentives to resolve criminal occurrences in a fair, effective and efficient manner. Concomitantly, any incentives to delay the resolution of criminal occurrences should be identified and addressed.

Use of Technology

Modern technologies can offer time and resource efficiencies when used to their full potential. For example, allowing witnesses to appear by video-conference has reduced travel costs and inconvenience. Other uses of technology may merit further consideration.

Rational allocation of resources

Many of our consultations have included an expression of frustration with resource shortages. Many have also acknowledged improvements can be made within existing resources. Those who are most demoralised express disappointment that their function is relatively poorly resourced and that the decisions underlying resource allocations across the system are not well understood or accepted. For example, an understanding on judicial complement and how many judges are required, has so far failed to reach a satisfactory conclusion.

In considering potential reforms to the criminal justice system, it is imperative to look at the policy and institutional elements that must be in place to ensure that the system as a whole succeeds. I look forward to hearing further feedback and suggestions from stakeholders and members of the public on these and other elements of success.

Context for Reform

In some respects a time traveller from the 19th century would recognise a trial being conducted today. In other respects the justice system is undergoing remarkable changes. Several reform initiatives have attempted to address some of the very challenges that led to the creation of this Review. Understanding

trends and changes, as well as learning from the achievements and shortcomings of recent initiatives, will be important steps to developing sound recommendations.

Previous and Ongoing Reform Initiatives

In the past decade, there have been numerous reform initiatives in British Columbia. For example, in 2004, the B.C. Provincial Court worked to reduce the backlog of cases through a Backlog Reduction Initiative.[1] Ministry of Justice officials attempted a broader approach to criminal justice planning and crime reduction through the development of a Provincial Community Safety Steering Committee. The Legislature has taken a significant number of cases out of criminal court by establishing alternate ways to ensure public safety, such as through the recent enactment of the Immediate Roadside Prohibition Program.

There are also several ongoing reform initiatives. Current criminal justice reform initiatives under the direction of the BC Ministry of Justice include: the Vancouver Downtown Community Court; the Prolific Offender Management Project; the Bail Reform Project; and Community Crime Prevention Projects.[2]

The Review needs to understand what progress is being made, or likely will be made, through these initiatives and should not get in the way of them succeeding. Learning about these and other attempts at criminal justice reform may also offer insights into the available options. In the next few weeks, I intend to continue meeting with stakeholders and the public to discuss previous and ongoing reform initiatives and to learn from their successes and failures.

Learning from Other Jurisdictions

Achieving and maintaining a fair, effective and efficient criminal justice system is a challenge faced across Canada and around the world. I also have found instructive reports from the various reform initiatives that have taken place in other jurisdictions. Among others, these include: the former U.K. National Crime Reduction Board; the South Australia Court Administration Authority; the development of problem-solving courts in New York, to name a few. In Canada I have reviewed information about Alberta's scheduling reforms, Manitoba's front end initiatives and the Justice on Target Strategy in Ontario.

Although the strengths and opportunities present in the British Columbia criminal justice system may lead to a unique approach to justice reform, consideration of what has worked or failed in other jurisdictions will be valuable to my analysis. I look forward to receiving additional stakeholder and public input on examples of criminal justice reform in other jurisdictions.

[1] Report of the Main Street Criminal Procedure Committee: http://provincialcourt.bc.ca/downloads/pdf/MainStreetCriminalProcedureCommitteeReportonBacklog.pdf
[2] BC Criminal Justice Reform Website: http://www.criminaljusticereform.gov.bc.ca/en/justice_reform_projects/community_court/index.html

Particular Issues

During consultations, several aspects of the criminal justice system were repeatedly identified as requiring special attention or reform. They are also the areas in which the broadest scope of opinion is found. Although all agreed that these are important questions, there is often disagreement as to the appropriate goals for the system, the appropriate measures that should be taken by the system, and even whether or not we are succeeding. Some of these are:

Domestic Violence

I heard wide-ranging views as to whether we are effectively protecting victims of domestic violence or achieving changes in offender behaviour. Some have suggested that an entirely new approach is necessary.

Support for First Nations

Despite the widespread recognition that aboriginal people are over-represented in the criminal justice system it is reported by many that aboriginal victims or accused are not being well served.

Administration of Justice Offences

There is widespread disagreement concerning almost everything about administration of justice offences—that is, offences related to the breach of conditions of release into the community. Some question the types of conditions being imposed. Others question the apparent increase in focus by police since the number of prosecutions for these offences is sharply on the rise. Many express frustration that the terms imposed don't seem to serve their purpose.

Large Case Management

Large and complex cases consume a great deal of court resources and have proven difficult to administer. Many have expressed the concern that these high-profile cases are at high risk of collapsing or failing to conclude. The B.C. Supreme Court has recently piloted a Criminal Pre-Trial Conference Pilot Project that involves active case management for complex criminal proceedings.

Mental Health and Addiction

A disproportionate number of people who are either accused of crime or are victims of crime suffer from mental illness and/or struggle with substance abuse and addiction. There is a widespread sense that traditional criminal processes and sanctions are ineffective in keeping the community safe from crimes committed by people resorting to crime to fund their substance addiction, and offer no hope for successful integration into the community. Victims of crime or accused persons suffering from mental illness present different but

serious challenges to their participation in the system. Many have suggested that the criminal justice system must develop greater expertise and more effective tools to recognize and address the causes and consequences of mental illness and substance abuse. This may require developing partnerships with healthcare and addiction agencies, or broadening the use of methods learned in existing pilots organised around mental health or drug issues.

Upcoming Consultations

I will continue to meet with stakeholders and the public through consultation sessions scheduled to the end of June, 2012.

Other ways to participate

I am grateful for the enthusiastic willingness to meet and discuss these important questions and the unstinting giving of time, attention and information by the members of the public and participants in the criminal justice system.

I hope that people will continue to follow the Review by reading my blog and leaving a comment, following our Facebook page or sending me an email, all via our website at www.bcjusticereform.ca. On June 1, 2012 we launched our online surveys on the website, and have received 49 responses in just over three weeks. I also encourage people to make use of our new subscription service available through the website, where you can sign up to receive emails from time to time announcing updates such as the release of my Final Report.

Closing Note

Over the past few months I have sought input and suggestions from a broad range of participants and stakeholders in the criminal justice system, including the public. I have gained a far better appreciation for the diversity of challenges and responses that we have had to address and accommodate. Many share a hope for improvement. In reviewing the many proposals and ideas that have been generated I am confident that improvements, both immediate and longer-term, deserving widespread acceptance, will be developed.

Geoffrey Cowper
Chair, BC Justice Reform Initiative

June 22, 2012

SCHEDULE 5

THE PROVINCIAL COURT
OF BRITISH COLUMBIA

August 14, 2012

Front-end Simplification of Criminal Process

The Court is examining the Criminal Caseflow Management Rules and expects to develop changes to front-end criminal processes intended to reduce the number of in-court appearances and return to counsel the primary responsibility for early case conduct. The model will include the development of case-streaming and differentiated case processing.

Assignment Court

A new system of case assignment to courtrooms and judges will be developed and implemented in British Columbia. It is anticipated the new model will see the assignment of cases (when first set for trial) to a courthouse rather than to a specific judge and courtroom. If the case is not resolved in some other fashion and the trial is confirmed as proceeding on the day set for hearing, the matter will then be assigned to an available trial court. Rigid advanced booking of resources will be replaced by flexibility so to reduce the loss of sitting time arising from collapsed cases, adjournments, and last minute guilty pleas.

Goals and Objectives of the new Scheduling Model

- To develop and implement scheduling practices that will enhance the effective, efficient and equitable use of judicial resources. This will improve access to justice and thereby increase public confidence in the justice system.
- To increase the breadth and reliability of case scheduling data that can be generated to better enable the Court to analyze its processes and manage changing caseloads and case types.
- To consult justice system stakeholders as new caseflow processes are developed and to foster systemic change.
- To develop new rota and scheduling software programs that will facilitate the new court scheduling system and take advantage of technological innovations including enhanced use of video technology and eCourt initiatives. Data that can be produced with a new Information Management system will better enable the court to monitor, evaluate and respond to changing needs.

Criminal Justice Branch
Justice Reform in B.C.'s Prosecution Service

The Criminal Justice Branch (CJB) actively engaged in the Justice Reform Initiative as Chaired by Geoffrey Cowper, Q.C. In support of the Initiative, the Branch developed its own set of measures that seek to streamline prosecution business processes; strengthen CJB's case management practices; and contribute in a meaningful way to a collaborative, systems-wide approach to justice reform.

CJB will use its best efforts to implement these measures by the end of December 2013. The Branch understands that its strategies form but one part of a larger, system-wide requirement for overarching reform and that further, cross-sector collaborative work between the Branch and other justice system participants is needed to achieve long-term, sustainable change and efficiencies.

CJB Branch Management Committee, July 2012

The CJB measures include:

A. Cross-sector and In-House Reform for Increased Efficiency

- ✓ pending final approval and under the leadership and authority of the Provincial Court of British Columbia, CJB will work co-operatively with the Court and Court Services Branch (Ministry of Justice) to inform a redesign of criminal case scheduling that seeks to facilitate early resolution, streamline the process and decrease delay to trial

- ✓ Crown "file ownership" of prosecution files will be expanded to reduce duplication of effort, achieve continuity of conduct and facilitate pro-active case management

- ✓ front-end Crown Counsel disposition teams will be established where feasible, with increased flexibility for early resolution of prosecution files

- ✓ a province-wide, CJB tracking system with standardized timelines and other quality control measures will be institutionalized in the Branch to ensure file completeness for purposes of charge assessment, disclosure compliance, witness availability and trial readiness

- ✓ new technology and information-flow projects will be completed, including: (1) a JUSTIN/PRIME Multi-push (comprehensive electronic disclosure between police and the Prosecution Service); and (2) ICON II (electronic disclosure from police, to the Prosecution Service, to Corrections Branch for in-custody accused)

- ✓ with Corrections Branch, CJB will strive for enhanced use of alternative measures across the province, including early risk assessment as an information tool where available and other approaches, to ensure the most effective model for appropriate referrals to non-court options

- ✓ CJB will explore a principled, expanded use of Direct Indictments to move cases directly into the Supreme Court of British Columbia when delay to trial is a reasonably-based concern
- ✓ a Major Case Management Model will be implemented with a project-management approach for the efficient and effective conduct of the Branch's largest, high profile cases
- ✓ the Branch will explore having police liaison officers embedded within Crown offices to enhance communication and training with police on charge assessment and case-management issues

B. Accountability, Transparency and Performance Measures

- ✓ CJB will be an active participant in the Justice Reform Council, Ministry of Justice, for the purpose of developing a sustainable, integrated approach to justice sector planning and prioritization
- ✓ CJB will develop, utilize and share its business intelligence data for both Branch specific and Ministry-wide, justice sector planning, analysis and open data strategies
- ✓ Key Performance Indicators and performance measures will be developed specific to the Prosecution Service for assessing operational outcomes
- ✓ an on-line, Branch-wide file closing survey will be implemented for gathering business intelligence and tracking major decision-points along the life of a prosecution file
- ✓ CJB will continue its development of an index that seeks to objectively measure the complexity of prosecution files for the purpose of planning and resource allocation
- ✓ there will be enhanced tracking of the reasons for the return of Reports to Crown Counsel to police (with no charges approved), to better understand patterns and inform both Crown and police policy and practice

About B.C.'s Prosecution Service

B.C.'s Prosecution Service – the Criminal Justice Branch, Ministry of Justice - conducts or supervises prosecutions and appeals at all levels of court. In Canada, the administration of justice, including prosecutions and appeals, is a provincial responsibility, although there are some offences prosecuted by federal prosecutors. B.C.'s Prosecution Service was formed in 1974. Provincial legislation governing the Prosecution Service, the *Crown Counsel Act,* was passed in June 1991. Crown Counsel and the Branch's administrative support staff are located throughout B.C. The Prosecution Service is divided into five regions – North, Interior, Fraser, Vancouver and Vancouver Island-Powell River. Provincial Headquarters is in Victoria. There are criminal appeals and special prosecutions offices in both Vancouver and Victoria.

BC Association of Chiefs of Police
PO Box 42529
New Westminster, BC
V3M 6L7

July 23, 2012

Mr. G Cowper, Q.C.
Chair
BC Justice Reform Initiative
2900-550 Burrard Street
Vancouver, BC
V6C 0A3

Dear Mr. Cowper:

Thank you again for your time when you met with Chief Constables Graham, Rich and me to discuss ways that police in the Province could contribute to the Justice Reform Initiative you are undertaking.

As we discussed, the BC Chiefs were in the midst of considering a Provincial Crime Reduction Initiative, where all police in the Province would agree on crime reductive goals for all communities as a commitment to work towards making B.C. safer. In our discussion, we saw a strong connection to the work you were doing.

On June 21st, 2012, at the BC Association of Chiefs of Police meeting held in Penticton, the following motion was passed:

Provincial Crime Reduction Initiative

WHEREAS *the BCACP are committed to reducing crime and increasing the level of safety in all communities in BC, and*

WHEREAS *the crime rate in BC is currently 1.9 times higher than Ontario and BC ranks eighth out of the ten Provinces for overall crime rate, and*

SCHEDULE 7

WHEREAS *the BCACP desires to make significant strides to maintain the public trust and to make BC safer,*

THEREFORE BE IT RESOLVED *that the BCACP:*

- *Establishes a Provincial Crime Reduction Initiative,*
- *Creates a working group to implement the Provincial Crime Reduction Initiative, including recommendations on the goals, metrics and targets for the initiative, to allow the Provincial Crime Reduction Initiative to begin in 2013, and*
- *Recommends to the BC Justice Reform Initiative that the Provincial Crime Reduction Initiative be part of his recommendations, and that he recommend including other criminal justice system partners and stakeholders to increase the success of the Initiative.*

The BC Chiefs will now establish a working group to implement this recommendation. We would be pleased to meet to discuss how to work with other partners in the criminal justice system and other related agencies to make this Initiative more effective.

We look forward to the report forthcoming from your Office and the opportunities it will create to make BC safer.

Sincerely,

Pete Lepine
Chief Constable
President, BCACP

RISK ASSESSMENT, RISK-BASED CASE MANAGEMENT AND JUSTICE REFORM

A submission to
GEOFFREY COWPER, QC

Issued by:

Corrections Branch
Ministry of Justice
British Columbia
August 2012

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Introduction

In February 2012, the Government of British Columbia released two papers focusing on the Justice System: (a) *Review of the Provincial Justice System in British Columbia* by the Internal Audit & Advisory Services, Ministry of Finance, and (b) *Modernizing British Columbia's Justice System* (the Green Paper).

The Audit review highlighted issues of accountability, workload, cost drivers, performance management, and operational management. The Green Paper provided the current context of the system, why the system needs reform, barriers to problem solving within the sector, and steps to engage in reform. A key element in the Green Paper was the acknowledgement that an external review was required. As stated in the paper, the reviewer(s) must participate directly in the administration of justice in B.C. but should not be a member of the criminal justice component, so they can objectively review and provide practical ways of improving the justice system. Geoffrey Cowper, QC, agreed to provide that review.

The Corrections Branch was invited by Mr. Cowper to participate in meetings to inform the review. Of the items discussed, risk assessment received the most focus. Subsequently, the Corrections Branch was invited to submit a short paper on risk assessment, including how it is used in Corrections, and how it could be expanded to assist in justice transformation. This paper is that submission.

Background

During the 1990's, there was a shift in correctional philosophy, referred to as the "What Works" Movement[i]. The shift in offender management was an increased emphasis on risk and needs matching offenders to services for specific risk factors[ii]. Important advances in offender risk assessment came from the work of Dr. Don Andrews and Dr. James Bonta who state that *crime prevention efforts that ignore, dismiss, or are unaware of the psychology of human behaviour are likely to underperform in regard to successful crime prevention*[iii].

The training and application of risk assessment is based on the evidence-based research of risk, needs and responsivity (RNR). RNR research states that the best way to reduce re-offending is to ensure the right intervention is matched to the right person in the most appropriate and timely manner. Research shows that as risk and needs increase, the level, intensity and type of intervention should be adjusted. Applying a standardized risk assessment tool based on RNR has the advantage of leading to more appropriate and if applicable, comprehensive case management plans which in turn leads to the right intervention and greater reductions in recidivism for medium and high risk clients[iv].

Research has also demonstrated that referring low risk individuals to treatment programs with the intention of preventing them from 'graduating' to more serious antisocial behaviours, can interfere with existing supports and skills sets and actually increase a person's risk to reoffend. In addition, over supervision of low risk clients with a high number of conditions can also increase re-offending. Therefore, this means that in addition to enhancing public safety, the RNR approach is fiscally responsible as low risk individuals should experience limited supervision interventions in order to avoid an increase in the person's risk to re-offend.

The RNR model has three core principles:

1) the ***risk principle:*** criminal behaviour can be reliably predicted and the level of service should be matched to the offender's risk to reoffend.
2) the ***need principle:*** correctional programs should focus on *criminogenic needs* -dynamic (changeable) risk factors that are directly linked to criminal behaviour.
3) the ***responsivity principle:*** maximizing an offender's ability to learn from an intervention by tailoring the intervention to the offender's learning style, motivation, abilities, and strengths, typically through cognitive behavioural interventions.

The assessment of risk and needs associated with reoffending is an essential component of evidence-based case management[v]. Risk assessment can inform all service providers in the criminal justice system, from police to treatment providers, of the future likelihood of certain individuals to re-offend. It can also inform decisions on

- the level of supervision police should/could provide certain individuals;
- an appropriate length and type of sentence a person should receive;
- supervision requirements and conditions; and,
- the type and intensity of case management and appropriate interventions.

Thorough risk assessment involves gathering and verifying information, interviewing offenders and collaterals[1], and applying standardized, validated tools to summarize an offender's risk level. Risk assessment procedures typically involve analyzing static (historical items such as number of prior convictions) and dynamic risk factors (criminogenic needs such as pro-criminal attitudes) which can cause offending behaviours, which are amenable to change, and inform risk prediction, case management, and treatment targets and options.

Research demonstrates that using actuarial[2] risk assessment tools are the most consistent method when predicting relative risk of criminal behaviour (relative to other offenders) and are considerably more accurate than unstructured professional judgment for sexual, violent, or other recidivism[vi].

The development and validation of risk assessment tools is evolving regularly, building on the need for improved predictive accuracy, utility, and integration with case-management. To ensure appropriate application and scoring of risk assessment tools and to limit the rate of false predictions, the research literature recommends the following:

- professionals applying and interpreting the information know the methodology underlying the tools as well as possible application errors,
- there is quality control of these tools and their application through regular structured discussions such as peer reviews and mentorships, and
- validation the tool(s) on the population under examination.

[1] Individuals directly affected by the criminal behaviour and/or persons who can speak knowledgeably about the offender.

[2] Actuarial risk assessment measures are developed in much the same way as insurance actuarial tables. Variables or factors that are statistically linked with increased risk of an outcome are scored together to produce a probability estimate against a comparison group.

Risk Assessment in B.C. Corrections

B.C. Corrections started utilizing risk assessment measures in 1996. It is the foundation of the B.C. Corrections evidence-based approach to offender case management as it informs decisions beyond the anticipated level of supervision; it also provides information on the needs of offenders that, when addressed, reduces their likelihood of reoffending. B.C. Corrections Community Corrections Division currently uses four actuarial evidence-based risk assessment measures:

- **Correctional Risk Needs Assessment** (CRNA) assesses a sentenced[3] client's risk and needs that are predictive of future offending.
- **Static 99-R** assesses a sentenced client's *static* risk factors associated with sexual and violent reoffending for sexual offenders.
- **SONAR** assesses a sentenced client's *dynamic* risk factors associated with sexual reoffending.
- **SARA** assesses a sentenced client's *dynamic* risk factors associated with spousal assault.

Risk assessment requires ongoing training and skill building, continuous support and quality management. Within B.C. these tools are applied in a standardized manner within a structured professional judgment (SPJ) approach[vii]. SPJ combines objective evidence-based assessment of predetermined risk factors (actuarial scales) with a professional interpretation of the severity, frequency, or duration of those predetermined risk factors.

The training, use, and quality management process of these tools are outlined in Branch policy and focus primarily on sentenced individuals[4].

[3] This tool is not applied to sexual offenders, see Static 99-R and the SONAR.

[4] The exception in policy is the use of the SARA on domestic violence Adult Alternative Measures clients

Risk Assessment & Justice Reform

Risk assessment and sentence management

Knowledge and understanding of the risk, needs, responsivity (RNR) model, as well as risk assessment and how it informs case management, should facilitate better communication between the justice partners and promote more efficient use of justice resources. Specifically, this would ensure that

- all components of the Justice sector have a clear understanding of risk assessment and the relationship between risk level, order conditions and case management would be advantageous to the sector and the public;
- lower risk clients who require few conditions receive sentences that match their risk and needs will combat over-supervision and contribute to reductions in recidivism (further explained below); and
- higher risk offenders receive sentences (and conditions) that respond to their criminogenic needs will contribute to reduced re-offending and increased public safety.

The process of risk assessment in different areas of the Justice sector will necessarily focus on risk that is relevant to those areas. Each role within the Justice sector will view risk differently. For example in the Custody Centres, B.C. Corrections uses two assessment tools, the ***Inmate Assessment*** (IA; previously the Inmate Classification Assessment) which assesses an inmate's security rating, and determines placement, and escort level and the ***Inmate Needs Assessment*** (INA) which assesses sentenced inmates' dynamic needs while in custody. Neither focuses on risk to re-offend. Additional examples of risk assessments in other Justice sector program areas include:

- Police: risk to public safety, risk to an investigation,
- Mental Health professionals: risk of harm, risk to re-offend (in criminal settings),
- Crown: risk to case conclusion, and
- Victim Services: risk to victim.

Benefits of expanding the Justice sector's understanding of risk assessment and how it informs case management include:

- increased collaborative discussions on sentence conditions so that
    - lower risk individuals are less likely to be negatively impacted in the long term and higher risk individuals are more likely to succeed in abiding by their conditions post conviction; and
    - conditions designed to respond to offender needs that are directly linked to re-offending;
- consistent referral, understanding and use of information in pre-sentence reports;
- informed discussions of orders aimed at reducing re-offending.

Pre-trial Risk Assessment for Bail Assignment and Violation

An additional benefit of a broader understanding of risk assessment may lead to the introduction of a pre-trial specific risk assessment tool. Pre-trial risk assessment focuses on identifying the likelihood of failure to appear in court and risk to public safety pending trial. Pre-trial risk assessment has a different purpose and focus from post-conviction assessment. As stated earlier, risk assessment to predict re-offending is comprehensive and time consuming due to the depth by which the assessor evaluates the offender's historic and current context to inform case management. For pre-trial, however, research has demonstrated that many of the factors considered relevant for post-conviction offenders do not accurately predict pre-trial success[viii].

An evidence-based pre-trial instrument is validated through research and is not influenced by ethnicity, gender, race or financial status. In addition, to allow for independent decision-making and the exercise of judgment, the pre-trial risk assessment process is utilized within the SJP approach outlined above. The risk assessment tools are typically 10 questions or less[5], are completed by the prosecution service, and match risk factors with easily accessible or already existing information such as type of charge and criminal history.

Studies in the United States show benefits to accused, the Justice sector, and public safety when pre-trial risk assessment for bail violation are in place[6]. Benefits include a reduction in higher-risk accused being released while awaiting trial, a reduction of low-risk accused being held in custody while awaiting trial, and reduction in bail violations by low-risk accused due to a decrease in the number of conditions and potential over supervision[ix]. A specific pre-trial tool would be required and does not exist at this time for B.C.

A pre-trial risk assessment in B.C. could also have additional benefits, including:

- a consistent referral process for pre-sentence reports to ensure applicable and appropriate referrals are made, thereby using resources in various areas of the Justice sector more effectively and efficiently, and ensuring sustainability;
- ensuring court ordered conditions for community supervision orders support interventions that are aimed at reducing re-offending;
- informing risk assessments throughout the Justice sector (as some of the core questions are similar across risk assessment tools), therefore decreasing the potential for duplicating work and increasing the responsivity of case management; and
- consistency of administration of justice charges.

[5] Virginia pre-trial risk assessment tool is an electronic tool that has eight items with a scoring mechanism that identifies low, below average, average, above average, or high risk levels and that informs (but not makes) the recommendation and then if appropriate, recommended conditions of release.

[6] See *Pretrial risk assessment in Virginia: The Virginia pretrial risk assessment instrument* (May 2009) Report by Luminostiy, Inc.

The development of a pre-trial risk assessment in B.C. would require the following elements:

- A research team to identify risk factors. This would include a research review, an examination of data from JUSTIN and CORNET (assuming the required data is collected and available) and subsequent data extraction and analysis;
- Development of an electronic pre-trial risk assessment tool into an existing system (e.g. JUSTIN) to gather the information and analyse risk;
- Piloting of that tool for a specific time (24 months is the recommended timeframe). The tool should be built into an existing system (e.g. JUSTIN) to gather the information and score the static historical items automatically. The score then informs the recommendation for bail;
- Validation of the pilot pre-trial tool using data extraction and analysis;
- Revisions of that tool and implementation of that tool procedurally and electronically;
- A second validation of the finalized risk assessment tool after a specific time; and
- Development and implementation of staff training in the use of the pre-trial risk assessment tool including subsequent refresher training and a quality management framework.

In addition, a more robust discussion would be required around the principles of pre-trial risk assessment, appropriate usage (e.g., it is a tool, not **the** tool, as it has limits), disclosure, ongoing support and quality management, challenges such as time constraints, resource constraints, capacity, culture, and mitigation strategies clearly identifying the process required should an accused act in an unpredicted manner.

Work in this area would improve the overall functioning of the justice system, including better service to the citizens of British Columbia, with a more focused and appropriate use of resources within the Justice sector.

Conclusion

Research shows that risk assessment to determine risk to re-offend is a thoroughly validated and evidence-based method to inform offender case management. Standardized risk assessment leads to better case management plans, improved matching of interventions to offender needs, and therefore significant reductions in recidivism for medium and high-risk clients. In addition, it facilitates fiscally responsible resource management by limiting over-supervision and reducing program resources to lower risk offenders, due to the potential of increasing rather than decreasing their risk of re-offending.

Specific to B.C., Corrections uses post-conviction risk-assessment as a key element of their evidence-based approach to offender case management. Risk assessment post-conviction provides information on the risk and needs of offenders that, when appropriately addressed through interventions, reduces their likelihood of reoffending. Pre-trial risk assessment would focus on identifying the likelihood of failure to appear in court and risk to public safety pending trial.

Through RNR training and the development of a pre-trail risk assessment tool, a better understanding across the Justice sector of the Risk-Needs-Responsivity model and of risk-based case management would

- increase the likelihood that offenders receive sentences and conditions that are matched to their criminogenic risk and needs which would ultimately reduce reoffending;
- facilitate the work of Corrections staff in providing interventions that are designed to respond to these criminogenic needs and ultimately reduce reoffending; and
- facilitate better communication between the justice partners, ensure a consistent approach to the management of offenders across the system and use justice resources more efficiently.

Recommendations

1. Police, Crown and the Judiciary be provided training on the principles of risk assessment. This training is intended to impact a number of the current issues in the Justice sector, such as over supervision of lows and increases in the administrative of justice cases that enter the criminal justice system. This could be accomplished by:
    - Corrections informing and updating its justice partners on the principles of risk assessment, how it guides case management and the application of interventions, and how evidence-based case management contributes to long-term behavioural change. Corrections sharing the expertise that it has developed through 16 years of work in this area, which positions the branch well to act as an advisor in the (a) development of training for the Justice sector in the risk, needs, responsivity (RNR), risk assessment, (b) how it informs case management, and (c) the quality management framework required to support it long-term.

2. Development of a specific pre-trial assessment tool. As discussed above the benefits of a pre-trial assessment tool could result in:
    - reductions in the number of court cases.
    - reductions in over supervision;
    - appropriate placement of accused waiting trial;
    - consistent use of pre-sentencing reports;
    - sentences and conditions that are matched to their criminogenic risk and needs which would ultimately reduce reoffending; and

    Due to B.C. Corrections' extensive experience in this area including development, validation, implementation and quality management, it would be apt for Corrections to act as a consultant to the development, validation, and implementation of a pre-trial risk assessment tool, should that work occur as well as delivery models for such a tool.

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Making Justice Work
Improving Access and Outcomes for British Columbians

Report from the Legal Services Society to the Minister of Justice and Attorney General The Honourable Shirley Bond, July 1, 2012

Executive summary

Background

On February 8, 2012, the Province announced an initiative to address challenges facing British Columbia's justice system and to identify actions to give British Columbians more timely and effective justice services.

As part of this initiative, the Minister of Justice and Attorney General, Shirley Bond, asked the Legal Services Society (LSS or the society) for advice on reforms to legal aid and to the larger justice system that could reduce costs so that savings can be reallocated to legal aid.

The Ministry of Justice also released a Green Paper, *Modernizing British Columbia's Justice System,* that highlights a number of issues affecting justice system performance and discusses key areas that need reform.

As BC's legal aid provider, LSS has direct experience with the problems outlined in the Green Paper. Systemic delays and the cost of court appearances make it more expensive for us to deliver the same level of service year over year. We also see how justice system inefficiencies and the lack of advice and representation services prevent people from resolving their legal issues in a timely manner. This can compound peoples' original problems and lead to additional demands on the provincial justice, social service, and health care sectors.

For these reasons, LSS is committed to improving the efficiency of our justice system, to reducing system costs, and to improving the system's effectiveness in helping people to resolve their legal issues and get on with their lives.

Request for advice

The Attorney General asked LSS to provide advice on a number of issues, including:

- New legal aid service delivery models that assume no funding increase
- Changes to the LSS tariffs to provide incentives for justice system efficiencies
- The use of telecommunications and the Justice Centre
- Ways that LSS might diversify its revenue stream to expand non-governmental revenue in a manner that will permit funding stability

The Attorney General also requested that, when preparing our advice, we look at experiences in other provinces, consult with justice system stakeholders, and consider the concerns of the bar that resulted in the partial withdrawal of criminal duty counsel services in the first four months of 2012.

An outcomes-focused justice system

The goal of our proposed reforms is to support a justice system that focuses on outcomes. By "outcomes," we mean timely, fair, and lasting resolution of legal problems.

This approach benefits not just those who are seeking a resolution to their problems, but the broader justice system and society as a whole. This is because a focus on outcomes will result in more enduring resolutions to the legal challenges that bring individuals to the justice system in the first place.

In civil matters, an outcomes-focused justice system starts with prevention, has timely resolution as its goal and views litigation as a last resort. For example, this might include education programs to assist separating couples and mediation services to help them settle matters on their own so they can avoid costly acrimonious court proceedings.

In the criminal context, an outcomes-focused justice system recognizes an accused person's need for and right to representation, but also facilitates resolutions that benefit society as a whole by addressing the underlying problems that led to the criminal behaviour, thereby reducing recidivism. For example, in a theft case, police, lawyers, the courts, and corrections might work with social services to help the accused find treatment for mental health issues that led to the theft.

As we prepared this report, we consulted with lawyers, community service agencies, police, and other legal aid plans, and we reviewed literature and evaluations from around the world. We have been struck by the similarity of problems across jurisdictions and by the growing consensus that focusing on outcomes will lead to a better justice system for all stakeholders.

Principles for making justice work

To support the development of an outcomes-focused justice system, we outline in Part 1 the fundamental principles and building blocks needed to shift from a lawyer-centric, process-centric culture to one that views outcomes as a fundamental metric of success and service to clients as the fundamental means of achieving that success.

The current state of legal aid in BC

In Part 2, we discuss the current state of legal aid in BC. Legal aid clients are among the province's most marginalized citizens. They lack the financial means to effectively access the justice system when their families, freedom, or security are at risk. Almost 70% have not graduated from high school, and many struggle with basic literacy. Others face linguistic or cultural barriers. Over 25% are Aboriginal; in some communities, this rises to 80%.

Today, the Legal Services Society has two staff offices and 31 contracted offices throughout the province, and provides services at more than 50 locations including law offices, courthouses, and community agencies. At each of these locations, individuals can get legal information and referrals to other social service agencies, and apply for legal representation. LSS also works with 24 community partners to bring legal aid information to rural and remote communities. Over 50% of eligible applicants receive a referral for representation on the day they apply; over 75% get a referral within five days.

Government funding recently increased by $2.1 million but has otherwise not been adjusted for inflation over the past decade or kept pace with some other components of the justice system. As a

result, LSS is not able to provide the range of services low-income people need to resolve their legal problems. Nor is LSS able to establish tariffs that will attract and retain lawyers to legal aid work.

Recommendations for reform

There has been a significant investment in the justice system over the past 15 years, primarily for prosecutorial and judicial services. As pressures within the system mount, it is important to identify where any future investments will have the greatest impact. In Part 3, we have identified a number of ways in which investment in legal aid will support an outcomes-focused and more efficient justice system.

Our recommendations for criminal law initiatives are expanded criminal duty counsel, early resolution referrals, disposition court, and increased use of video bail.

For family and child protection matters, we recommend increasing the availability of existing services by providing more duty counsel and more community-based advice services coupled with assistance for related, non-family legal problems; more unbundled services; and support for mediation programs.

Other recommendations include the use of non-lawyer service providers to assist duty counsel and support justice system efficiencies, poverty law services, increased services for Aboriginal peoples, and greater use of specialized, problem-solving courts such as drug courts or domestic violence courts.

For six of our proposed services, we provide an analysis, based on available data, of the potential savings to the broader justice system. Detailed research is required before full implementation of our proposals. This can best be done through pilot projects to test the underlying assumptions of our recommendations and to gather better data on service costs, savings, and outcomes.

Next steps

The first stage in pursuing any of these initiatives will be to review Ministry of Justice data and operating assumptions, along with justice reform priorities and our own data. With that information, LSS would be in a position to develop the requisite project charters, budgets, and work plans to support effective implementation of the pilot projects. The timelines for these initiatives would be determined by the availability of resources to support them.

The criminal law initiatives that our preliminary analysis suggests will provide the greatest benefits in terms of outcomes for clients and quantifiable and unquantifiable savings to the justice system are expanded duty counsel services in high volume locations. Next are video and telephone bail, and early resolution referrals and tariff initiatives.

Increasing family law services to address public needs and to support recent changes to family legislation in BC should also be a priority. Given the scarcity of resources in the family justice system, it will be especially important to collaborate with agencies such as the Family Justice Services Division of the Ministry of Justice to plan and implement new or expanded service options. As well, to ensure the right resources are aligned with the most appropriate activities, training and skill development will be important considerations.

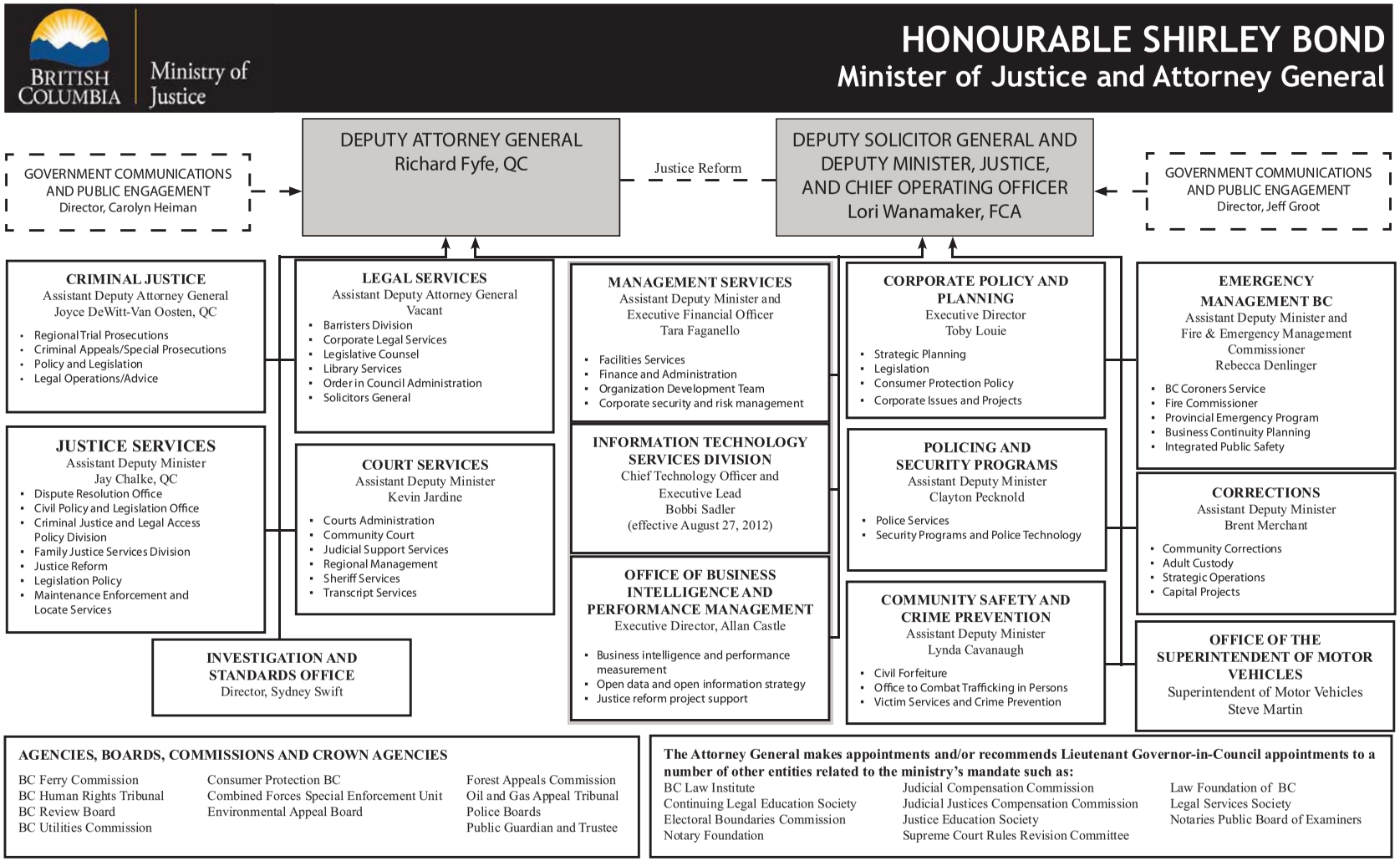
Another priority should be the addition of non-lawyer service providers to assist criminal and family duty counsel and to support efficiencies elsewhere in the justice system.

SCHEDULE 9

To be successful, reform requires the active commitment of all justice system partners to shared goals and measurable targets, and a collaborative approach to meeting them. Real reform as outlined in this paper will also require new investments in legal aid or reallocating funds within the justice system to support reform initiatives. Justice system savings generated by any enhancements to legal aid services can be measured and redirected to LSS to offset some of the costs of these enhancements. As most savings will be in avoided future costs, tracking the inputs, outputs, and outcomes of piloted services or system changes will be critical to quantifying results to ensure any dollars saved can be reallocated to the most effective projects.

Proposals that initiate a shift to an outcomes-focused justice system can also generate a range of savings that are real, significant, and system-wide, but difficult to quantify. For example, our proposals can create ancillary benefits through incremental improvements in working relationships, breaking down of silos, systems thinking, and process improvements that may vary location by location. Further, because the proposed initiatives focus on outcomes, they will create benefits for clients. For example, when clients achieve early and more stable resolution of their legal issues, they are less likely to experience legal problems in the future, and their related issues – such as health or debt – are less likely to escalate. While these benefits avoid future costs to the justice system and to government, they also generate a positive impact on clients, their families, and their communities that is both profound and immeasurable.

Implementing an outcomes-focused justice system will require strong leadership that might best be delivered through a dedicated Reform Secretariat. LSS is prepared to take an active role in ongoing justice reform discussions and to make justice work for all British Columbians.



AGENCIES, BOARDS, COMMISSIONS AND CROWN AGENCIES

BC Ferry Commission
BC Human Rights Tribunal
BC Review Board
BC Utilities Commission
Consumer Protection BC
Combined Forces Special Enforcement Unit
Environmental Appeal Board
Forest Appeals Commission
Oil and Gas Appeal Tribunal
Police Boards
Public Guardian and Trustee

The Attorney General makes appointments and/or recommends Lieutenant Governor-in-Council appointments to a number of other entities related to the ministry's mandate such as:

BC Law Institute
Continuing Legal Education Society
Electoral Boundaries Commission
Notary Foundation
Judicial Compensation Commission
Judicial Justices Compensation Commission
Justice Education Society
Supreme Court Rules Revision Committee
Law Foundation of BC
Legal Services Society
Notaries Public Board of Examiners

SCHEDULE 11

British Columbia
Charge Assessment Review

Gary McCuaig, Q.C.

May 2012

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Background to the Review

On February 8, 2012, British Columbia announced a justice reform initiative to identify how the government, judiciary, legal profession, police and others can work together to improve the efficiency and effectiveness of the provincial justice system.

The scope of the reform agenda is set out in a Green Paper entitled "Modernizing British Columbia's Justice System" that was released with the announcement. The initiative follows an internal audit conducted in 2011 to assess growing resource pressures on the justice system.

Geoffrey Cowper Q.C. was appointed Chair of the Review. He is to consult with stakeholders across the justice system to look at the challenges set out in the Green Paper. He is to identify top issues affecting the public's access to timely justice and what can be done to ensure that efficiencies already underway have the desired impacts while respecting the independence of the judicial system.

As part of the broader justice system review, Gary McCuaig Q.C. has been engaged to conduct an independent review of the way in which criminal charges are assessed and laid in British Columbia.

British Columbia is one of three provinces that designate Crown prosecutors as the decision makers in the laying of charges. In other provinces, police make the decision to lay charges, with Crown prosecutors reviewing the charges once laid to determine if they will proceed with the prosecution. The relative merits of the systems are to be considered, including whether pre-charge assessment should be maintained, and if so, whether improvements to the system can be made.

Executive Summary

The issues of court delays and increasing costs are not unique to BC. These are pressing concerns of all governments across Canada.

This Review was undertaken to examine the pre-charge assessment regime in place in BC. There has been a long-standing desire by segments of the police community to revert to a post-charge assessment process. The arguments have been based on constitutional authority and jurisdiction. There is some thought that a post-charge system is more efficient but there is no evidence to support this claim. This topic has been the subject of debate and analysis by a number of provincial Commissions and Inquiries going back to the 1980s. Each of them endorsed the existing system.

On a day to day basis, the two models differ little in any significant manner.

In summary, this Review has considered the following questions:

1. **Is the charge standard of 'substantial likelihood of conviction' the appropriate one?**
2. **Should the Ministry retain the pre-charge assessment model or adopt a post-charge model?**
3. **What improvements to the assessment process would be appropriate?**

After reviewing a portion of the written material on this subject and speaking with over 90 people , I have concluded that the pre-charge assessment regime – the charging standard and the existing assessment processes (as set in the Crown Counsel Manual Guidelines) – should be retained. The basics of the system are sound. Overall, it has worked well for almost 30 years. There is neither a general consensus nor compelling evidence that the process needs to be markedly changed, or that reverting to a post-charge system would increase efficiencies.

The Crown has legitimate needs and concerns in the process:

1. **The need both legally and practically to have most files in a 'disclosure-ready' condition before or immediately after a charge is laid.**
2. **Recognition that its resources to assess and prosecute and the resources of the courts to hear cases are finite and the need to conserve all of these, as far as practicable, for more serious cases. The Crown is the most effective gatekeeper.**

However, there are two parts of the process that should be examined to address police concerns:

1. **Police resources needed to satisfy the Report to Crown Counsel (RTCC) requirements. This issue can be addressed by examining the types of cases where a charge assessment might be done (without lessening the quality of the assessment) using an abbreviated RTCC. As well, the police might be encouraged to consider alternate forms of investigative tools in certain cases to lessen their own workload in compiling reports.**
2. **Whether more public order offences/administrative offences should be prosecuted in some locales than now is believed to happen. This examination should include both a statistical component and whether the public interest factors, listed in the Charge Assessment Guidelines, need clarifying commentary, as they may, as now structured, suggest conflicting directions. For example, the need to protect the integrity of the justice system is a factor in favour of prosecution: it is a factor against prosecution if a conviction is likely to result in a very small or insignificant penalty. This scenario often presents itself in administrative offences.**

Introduction and Terms of Reference

The public controversy in BC is focused on delays and court costs. It is important to remember that these issues are not unique to BC. Every city of any size and every province in Canada is struggling with the same issues. They are topics of almost endless discussion with officials of provincial and federal governments.

In conducting this Review, I have spoken to over 90 people: judges, Crown Counsel, defence lawyers, correctional officials, legal aid and government officials (past and present), and others working in or interested in criminal justice. I have also had the invaluable assistance of Ministry officials and staff, particularly James Deitch, Wendy Jackson, Paula Bowering, Amber Ward and Dubravka Ceganjac. They have made my job immeasurably easier.

Without exception, all to whom I spoke gave generously of their time to educate me and help focus my thoughts. To them I extend my thanks. They are acutely aware of their responsibilities to their communities, the public and the accused. They are all genuinely committed to making the system better, more responsive, and fair to all.

In summary, I have been asked to examine the Charge Assessment process in use in British Columbia and determine:

1. **Is the charge standard of 'substantial likelihood of conviction' the appropriate one?**
2. **Should the Ministry retain the pre-charge assessment model or adopt a post-charge model?**
3. **What improvements to the assessment process can be recommended?**

In addition to answering these questions, I would like this Report to serve an educational purpose for those unfamiliar with the assessment process. So it is best to start by setting out some truths and caveats:

- **Our criminal justice system is not an inquiry into truth. It is not about whether an accused actually committed a crime but whether there is sufficient evidence to prove that he committed it. To put it simply: it is not about whether an accused 'did it' but whether the Crown can prove it.**
- **Our criminal justice system, which has evolved and been refined over centuries, can be slow to respond to societal changes and public expectations. This is as it should be, as it is designed to provide a fair, rational hearing to an accused on the evidence presented, as free as possible from extraneous emotion.**

The limited timeline for this Review has largely eliminated the possibility of gathering statistical data to support my analysis and conclusions. My comments and conclusions are based on the opinions of experienced and informed observers and system participants. My

recommendations are meant only to highlight areas that may benefit from a more detailed study.

There is no system that cannot be improved upon. But to justify changing fundamental and long standing practices, there must be compelling evidence that significant positive results will (not may) be achieved. Change without making the end product demonstrably better is disruptive, costly and serves no purpose.

The Context in British Columbia in 2012

The justice system in Canada has deep roots both here and in Britain. It is the product of centuries of experience and refinements. It is far from perfect. There are other legal systems but this is the one we have chosen.

It is not a system amenable to 'quick fixes'. Our criminal law is the purview of the federal government, but the responsibility for making the system work and paying for it falls largely to the provinces. Add to that the fact that the various players – prosecutors, police, defence counsel and the judiciary – have historic roles and legally recognized 'independences' that each has jealously guarded over time and the challenges for problem-solving become apparent.

Looming over all of the provincial responsibilities to manage the system locally is the Charter of Rights – the right to a trial without undue delay, the right to make full answer and defence – and pronouncements of the Supreme Court of Canada – the right to full disclosure of the Crown's evidence. These contribute significantly to the length and complexity of the court process but are the laws of the land and beyond the jurisdiction of any provincial government to effectively limit or change.

It is understandable that those answerable to the public, who have many other calls on their time besides the justice system, seek fast and measurable improvements. Daily stories of court delays and costs and sensational trials dominate the media. In turn, public pressure mounts to 'do something'. But the various parts of the system are in practice interdependent. Change in one part affects all the others.

So those whose responsibility it is to manage and fund the system are in a very difficult position. The province must fund a system over which it has limited influence or control, putting money into one part sets up a domino effect and the resources available for all areas – justice, health care, education, social services, and many others – must now must be stretched further than in the past.

There is a move to use business processes – benchmarks, outputs, outcomes and the like – to improve efficiencies. These can be of some limited use in the criminal justice context. They can highlight trends and show that long-held assumptions may no longer be accurate. They can help focus on areas that need attention. But from there the value is questionable. Care must be taken as to what conclusions are drawn from statistics. The criminal justice system does not produce a tangible product or outcome. What it seeks to achieve is a just and timely result for all involved, following a fair process and trial. This is a quality outcome not fully measurable by business processes.

If there is a crisis of public confidence in the justice system (assuming that public surveys and media comments are an accurate gauge of this), the best way to rebuild that trust is to try to do the right thing on every case and ensure, as far as possible that justice is done. And to explain to the public much better than in the past how the system works and what we as a society should realistically expect of it.

The Vancouver Riot Charges

The controversy surrounding criminal charges arising out of the 2011 Vancouver Stanley Cup riot provides a very timely and useful springboard to discuss parts of the charge assessment process.

There has been much criticism over the length of time that it has taken to bring charges to the courts. This demonstrates some of the general misunderstanding of the process.

It is clear that the investigation and prosecution involve almost unprecedented police and Crown resources. Accused number in the hundreds. The video evidence alone is comprised of thousands of clips. Lastly, the police and prosecution teams working on this project are not extra resources but have been reassigned from other duties.

Any new project, particularly of this size, will involve some trial and error. But rather than using the riot prosecutions as an example of what is wrong with the charge assessment system, they should be viewed as an example of how we would wish it could operate on all occasions.

To answer the criticisms:

- It is simply not feasible to charge everyone who can be charged. It is necessary to closely examine all of the investigations to focus on the most involved persons.
- Some of the trials will inevitably involve lengthy evidentiary arguments that may result in landmark rulings.
- To obtain an appropriate sentence, Crown Counsel must show the full extent of an offender's involvement. To do this takes hours of review of the evidence. It is rarely as simple as seeing someone throw a brick through a window. The main charges are those of participating in a riot, not wilful damage.
- As a matter of law, an accused is entitled to disclosure of all of the evidence against him. The earlier in the process that he sees full disclosure and the strength of the case he faces, the sooner his counsel can give him informed advice as to whether he should plead guilty. Indeed, no counsel would advise a guilty plea without seeing all of the evidence against his client.
- Comparison to other jurisdictions does not advance the argument. There has been comment that the UK dealt with its 2011 rioters much more quickly and why can't we do the same? Such comments overlook that the UK legislation provides more

options and broader prosecution and court powers than exist in Canada. As well, several of the more publicized sentences meted out early have been reduced by appeal courts.

The police and prosecution have weathered much criticism for what has or has not happened in the court process. This is both inaccurate and unfair. They have devoted significant personnel to this investigation. Both have been working full time for months to organize a huge amount of material so that the right people can be brought before the courts with strong evidence and the appropriate charges.

A History of Charge Assessment in British Columbia

Up until the mid-1970s, a variety of post-charge assessment systems were in use in various municipalities in the province.

In 1974, a more uniform charge assessment practice began to develop with the establishment of the Crown Counsel system. At that time, significant court delays and stays flowing from inadequate police reports and unprovable charges had become a problem. There was still no one charge approval standard in use throughout the province. Some prosecutors used a prima facie case test, others a "reasonable chance of conviction" test and still others required that the evidence needed to establish the case beyond a reasonable doubt.

In 1982, a Ministerial Task Force recommended that the Crown take over the charging function to help improve the quality both of police reports and cases moving forward. These recommendations were adopted and widely credited with improving efficiencies and saving costs.

Circa 1983, the Attorney General's Department adopted a two-tiered test similar to what it is today: an evidentiary threshold of substantial likelihood of conviction, followed by a consideration of public interest factors. The decision to lay charges remained that of the Crown. The basics of that system continue to today.

The existing regime has not gone unchallenged. It has been the subject of discussion - directly or otherwise – on several occasions in BC:

1987 – Access to Justice: Report of the Justice Reform Committee – Ted Hughes Q.C.

1990 – Discretion to Prosecute Inquiry – Stephen Owen Q.C.

2010 – Special Prosecutor Review – Stephen Owen Q.C.

2011 – The Frank Paul Inquiry – William Davies Q.C.

The Hughes Commission in 1987 confirmed that the prosecution should retain the charging function but recommended that there should be an appeal procedure available to the police when they disagree with a Crown decision not to lay charges.

Stephen Owen, in his Discretion to Prosecute Inquiry (1990), examined the assessment standard and process in detail. He heard the arguments for and against retaining the existing system but found no compelling reason to recommend changing the regime. He did recommend that the charging standard be changed from 'substantial likelihood' to 'reasonable likelihood' (Volume 1 pp. 98-104).

In response, the Attorney General's Department struck a committee to consider Commissioner Owen's recommendations. The committee decided against changing the standard but did clarify the policy as to what the wording meant. As well, out of this came the Crown Counsel Act which statutorily recognized the independence of the Crown Counsel.

Since then, the charging Policy and Guideline has been periodically refined and added to, particularly:

- **The addition of the 'exceptional case' standard; and**
- **An increase in the number of listed public interest factors that Crown Counsel must consider.**

The Charging Standard

The Charge Assessment Guidelines of the BC Crown Counsel Policy Manual read:

Under the Crown Counsel Act, Crown Counsel have the responsibility of making a charge assessment decision which determines whether or not a prosecution will proceed.

In discharging that charge assessment responsibility, Crown Counsel must fairly, independently, and objectively examine the available evidence in order to determine:

1. ***Whether there is a substantial likelihood of conviction; and, if so,***
2. ***Whether a prosecution is required in the public interest.***

A substantial likelihood of conviction exists where Crown Counsel is satisfied there is a strong, solid case of substance to present to the Court.

Once Crown Counsel is satisfied that there is a substantial likelihood of conviction (the evidentiary test), Crown Counsel must determine whether the public interest requires a prosecution by considering the particular circumstances of each case and the legitimate concerns of the local community. Public interest factors include those outlined below.

Exceptional circumstances may require that a prosecution proceed even though the usual evidentiary test is not satisfied. Such circumstances will most often arise in cases of high-risk violent or dangerous offenders or where public safety concerns are of paramount consideration. In these cases, charging decisions must be approved by Regional or Deputy Regional Crown Counsel and the evidentiary test is whether Crown Counsel is satisfied that there is a reasonable prospect of conviction.

The requirement to meet the two-part charge assessment standard, consisting of the evidentiary test and the public interest test, continues throughout the prosecution.

There follows a discussion of general principles:

The independence of Crown Counsel must also be balanced with measures of accountability. Principled charge assessment decisions are assured when Crown Counsel experienced in assessing evidence exercise discretion in accordance with Branch public policies when reviewing the available evidence and applicable law.

During the charge assessment process, Crown Counsel does not have the benefit of hearing the testimony of Crown witnesses, either in direct or cross-examination, nor the defence evidence, if any. During the course of a preliminary hearing, when preparing for trial, or during trial, the Crown's case may be materially different than at the charge assessment stage. The requirement to meet the charge assessment standard continues throughout the prosecution.

The Criminal Justice Branch recognizes that the police have the authority to lay an Information; however, Crown Counsel have the ultimate authority to direct a stay of proceedings. Therefore, it is expected that the police will lay an Information only after the approval of charges by Crown Counsel, or, if charges are not approved, upon exhaustion of an appeal of that decision by the police (see policy CHA 1.1).

Recognizing that the charge assessment responsibility of Crown Counsel and the investigative responsibility of the police are independent, cooperation and effective communication between Crown Counsel and the police are essential to the proper administration of justice. In serious cases, or those of significant public interest, Crown Counsel discuss with the police, where practicable, their intention to not approve a charge recommended by the police (a 'no charge' decision).

Evidentiary Test-Substantial Likelihood of Conviction

The usual evidentiary test to be satisfied is whether there is a substantial likelihood of conviction.

A substantial likelihood of conviction exists where Crown Counsel is satisfied there is a strong, solid case of substance to present to the Court. In determining whether this standard is satisfied, Crown Counsel must determine:

1. **What material evidence is likely to be admissible;**
2. **The weight likely to be given to the admissible evidence; and**
3. **The likelihood that viable, not speculative, defences will succeed.**

Comment

British Columbia uses the standard of 'substantial likelihood' while all other provinces (including Quebec and New Brunswick, which are also pre-charge assessment provinces) use the standards of 'reasonable prospect' or 'reasonable likelihood'. Articles and the Charging Guideline itself suggest that there is an articulable difference and that 'substantial' connotes a higher or stricter test than 'reasonable'.

Some police officers feel that there is a difference, as do some Crown Counsel. Others see no difference.

The use of the word 'substantial' is not incidental, nor has it been arrived at lightly. There has been considerable debate about it over time (see History in BC). It has been in use since the 1980s and its interpretation has been refined in the policy Guideline since that time. Nor should it be overlooked that Commissioner Owen, in his 1990 Report, recommended that the test be changed to that of 'reasonable likelihood', and that the Attorney General's Department deliberately chose to retain the "substantial likelihood" standard.

In practice, the views again diverge. A number of police, Crown Counsel, and judges were asked whether they saw any real difference in the application of the different standards. There was far from any consensus. Some felt that there would be no difference in assessing a file; others felt that there would be. This is consistent with the divergent opinions expressed in the Decision to Prosecute Inquiry back in 1990.

It is difficult to envision a situation in which the assessment of the case – whether to charge or not charge – would be different using the different standards. To rephrase in another way: what a prosecutor asks himself/herself in making an assessment decision is: "Is the admissible evidence such that I believe that I can prove this case beyond a reasonable doubt?"

If there is in fact a practical difference, the cases where there would be a difference in the charging decision would be few.

An obvious question has been asked – if there is little or no practical difference between the substantial and reasonable standards, and since all other Canadian jurisdictions use reasonable, then why should BC not adopt the reasonable standard, particularly since Stephen Owen recommended it in 1990?

Firstly, it is useful to consider that to change to a reasonableness standard could have several negative consequences:

- A significant mindset change in all of its Crown prosecutors and officials, as all have been working with the 'substantial "standard for almost 30 years.
- Crown Counsel may have less confidence in their own decisions with resulting potential delays in making charge decisions.
- A potential lowering of the evidential bar over time.
- A potential reduction in the quality of police investigations/reports, since the bar could be considered as lowered, even by a small margin.

As well, its long history in BC and the fact that the Ministry made a considered, principled decision to retain it previously.

As noted earlier, a change in the standard or process must be justified by a real probability of positive change. This is not so when we talk of the actual charging standard. BC may be alone in its choice of the standard but that does not mean that the choice is wrong. There is no evidence that changing it would bring tangible benefits. Whatever issues there may be with the process do not arise from the standard.

This would be change for the sake of change.

Public Interest Test

Once Crown Counsel is satisfied that the evidentiary test is met, Crown Counsel must determine whether the public interest requires a prosecution. Hard and fast rules cannot be imposed as the public interest is determined by the particular circumstances of each case and the legitimate concerns of the local community. In making this assessment, the factors which Crown Counsel will consider include the following:

1. ***<u>Public Interest Factors in Favour of Prosecution</u>***

   It is generally in the public interest to proceed with a prosecution where the following factors exist or are alleged:

   - ***(a) the allegations are serious in nature;***
   - ***(b) a conviction is likely to result in a significant sentence;***
   - ***(c) considerable harm was caused to a victim;***
   - ***(d) the use, or threatened use, of a weapon;***
   - ***(e) the victim was a vulnerable person, including children, elders, spouses and common law partners (see policies ABD 1, CHI 1, ELD 1 and SPO 1);***
   - ***(f) the alleged offender has relevant previous convictions or alternative measures;***
   - ***(g) the alleged offender was in a position of authority or trust;***
   - ***(h) the alleged offender's degree of culpability is significant in relation to other parties;***
   - ***(i) there is evidence of premeditation;***
   - ***(j) the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor (see policy HAT 1);***
   - ***(k) there is a significant difference between the actual or mental ages of the alleged offender and the victim;***
   - ***(l) the alleged offender committed the offence while under an order of the Court;***
   - ***(m) there are grounds for believing that the offence is likely to be continued or repeated;***
   - ***(n) the offence, although not serious in itself, is widespread in the area where it was committed;***
   - ***(o) the need to protect the integrity and security of the justice system and its personnel;***
   - ***(p) the offence is a terrorism offence;***
   - ***(q) the offence was committed for the benefit of, at the direction of or in association with a criminal organization.***

2. *Public Interest Factors Against Prosecution*

It may not be in the public interest to proceed with a prosecution where the following factors exist or are alleged:

(a) a conviction is likely to result in a very small or insignificant penalty;
(b) there is a likelihood of achieving the desired result without a prosecution by the Criminal Justice Branch. This could require an assessment of the availability and efficacy of any alternatives to such a prosecution, including alternative measures, non-criminal processes or a prosecution by the Federal Prosecution Service. Crown Counsel need not conclude, in advance, that a prosecution must proceed in the public interest if a referral for an alternative measure is not acceptable. Information with respect to the suitability of a candidate for diversion or alternative measure is a factor to be taken into consideration by Crown Counsel in reaching a final charge assessment decision;
(c) the offence was committed as a result of a genuine mistake or misunderstanding (factors which must be balanced against the seriousness of the offence);
(d) the loss or harm can be described as minor and was the result of a single incident, particularly if caused by misjudgment;
(e) the offence is of a trivial or technical nature or the law is obsolete or obscure.

3. *Additional Factors to be Considered in the Public Interest*

(a) the youth, age, intelligence, physical health, mental health, and other personal circumstances of a witness or victim;
(b) the personal circumstances of the accused, including his or her criminal record;
(c) the length and expense of a prosecution when considered in relation to the social benefit to be gained by it;
(d) the time which has elapsed since the offence was committed;
(e) the need to maintain public confidence in the administration of justice.

Comment

The decision to discontinue or proceed with a prosecution after consideration of the relevant public interest factors ultimately represents a decision by Crown Counsel about what is the appropriate use of limited resources and what constitutes the appropriate response to an offence in a particular community. It is also an acknowledgement of the long-accepted view that not all criminal conduct needs to be prosecuted and that resorting to the criminal court process should generally be the last response to anti-social behaviour, rather than the first.

The public interest factors are aimed in part at sorting out those offences that can be dealt with more appropriately by means other than the court system. This could mean that the alleged offender is dealt with in an alternative way (such as by a diversionary program), or it could mean that the offence is simply not prosecuted. For example, an offence might be relatively minor and result in a very small penalty in the event of a conviction. These factors would weigh against a prosecution. However, it may be that the same relatively minor offence is widespread in the community and, as such, requires prosecution in order to achieve a deterrent effect (pp 35-36 Pre-Charge Assessment in British Columbia; A Review of the Process – Criminal Justice Branch Ministry of the AG January 2012).

The number of public interest factors has been increased over the years (from 5 to 14). Most other provinces have similar factors (some less detailed) in the public interest branch of their charging standards.

There has been no suggestion that the listed factors are wrong or in need of change. It is in their application that some criticisms have been made (see The Charge Assessment Process).

Exceptional Cases

Exceptional circumstances may require that a prosecution proceed even though the usual evidentiary test is not satisfied. Such circumstances will most often arise in cases of high-risk violent or dangerous offenders or where public safety concerns are of paramount consideration. In these cases, charging decisions must be approved by Regional or Deputy Regional Crown Counsel and the evidentiary test is whether Crown Counsel is satisfied that there is a reasonable prospect of conviction.

Evidentiary Test in Exceptional Cases

Exceptional circumstances may require that a prosecution proceed even though the usual evidentiary test described above is not satisfied. Such circumstances will most often arise in cases of high-risk violent or dangerous offenders or where public safety concerns are of paramount consideration. Such charging decisions must be approved by Regional or Deputy Regional Crown Counsel.

The evidentiary test in such cases is whether Crown Counsel is satisfied that there is a reasonable prospect of conviction. This test is higher than that of a prima facie case. A weighing of admissible evidence and viable defences is not required. Crown Counsel should consider:

1. **what material evidence is arguably admissible;**
2. **whether that evidence is reasonably capable of belief; and**
3. **whether that evidence is overborne by any incontrovertible defence.**

Comment

In 1996, the charge assessment policy was amended by the addition of the exceptional case standard. It was aimed at high-risk or violent offenders or where the public safety concerns were heightened and permitted Crown Counsel to approve a charge in those instances if there was a reasonable, not substantial, prospect of conviction. Such approval had to be preceded by consultation with Regional Crown Counsel (RCC).

In 1999, this portion of the Guideline was amended by setting out what Crown Counsel had to consider before charge approval. It also now required the consent of RCC or Deputy RCC before charge approval.

This part of the guideline is a compromise between two approaches. It was suggested at one point that this type of case be dealt with by allowing Crown Counsel to approve a charge based solely on the public interest factors. This argument was rejected.

Although there may be an argument that this prong of the policy means that not everyone is subject to the same standard, it is preferable to allowing a charge to be laid without any evidentiary standard. The additional safeguard of senior Crown approval is present.

This section of the standard has been used in only a handful of cases and is satisfactory as drafted.

Charging Standards – Other Jurisdictions

These charging standards are found in the prosecution policies of each respective province:

Alberta: reasonable likelihood of conviction – a reasonable jury, properly instructed, is more likely than not to convict the accused of the charge(s) alleged.

Saskatchewan: reasonable likelihood of conviction.

Manitoba: reasonable likelihood of conviction.

Ontario: reasonable prospect of conviction – does not require a probability of conviction.

Prince Edward Island: reasonable likelihood of conviction – the prospect of displacing the presumption of innocence must be real.

Nova Scotia: realistic prospect of conviction – the prospect of displacing the presumption of innocence must be real.

New Brunswick: reasonable prospect of conviction – more likely than not to convict.

Newfoundland: reasonable likelihood of conviction – the prospect of displacing the presumption of innocence must be real.

Public Prosecution Service of Canada: reasonable prospect of conviction.

Comment

In formulating its standard, each province has engaged in a rigorous examination of the literature on point and adopted the standard it has. None of these were arrived at without thought and discussion.

In addition to the sufficiency of evidence branch, every province has a second branch to be considered only after Crown Counsel has determined that there is sufficient evidence to proceed. These are the public interest factors which may affect the decision to prosecute. Each province has a similar list of factors. These can be reviewed by the prosecutor to decide either in favour of or against proceeding. They recognize established law and common sense that not every crime, however provable, need be prosecuted. Each case must be assessed on its own merits.

The Charge Assessment Process

The Guideline reads as follows:

In all cases, in applying the charge assessment standard, the important obligations of Crown Counsel are to:

1. ***Make the charge assessment decision in a timely manner, recognizing the need to expedite the decision where an accused is in custody, where a Report to Crown Counsel requests a warrant, or where the charge involves violence;***
2. ***Record the reasons for any charge assessment decision which differs from the recommendation of the police in the Report to Crown Counsel;***
3. ***Where appropriate, communicate with those affected, including the police, so that they understand the reasons for the charge assessment decision; and***
4. ***Consider whether proceeding by indictment after the expiry of a limitation period could constitute an abuse of process based on any failure by Crown Counsel or the police to act in a timely manner.***

Report to Crown Counsel

In order that Crown Counsel may appropriately apply the charge assessment standard, the Report to Crown Counsel (RTCC) should provide an accurate and detailed statement of the available evidence. The following are the basic requirements for every RTCC whether the information is provided electronically or not:

1. ***A comprehensive description of the evidence supporting each element of the suggested charge(s);***
2. ***Where the evidence of a civilian witness is necessary to prove an essential element of the charge (except for minor offences), a copy of that person's written statement;***
3. ***Necessary evidence check sheets;***
4. ***Copies of all documents required to prove the charge(s);***
5. ***A detailed summary or written copy of the accused's statement(s), if any;***
6. ***The accused's criminal record, if any; and***
7. ***An indexed and organized report for complex cases.***

If the RTCC does not comply with these standards it may be returned to the investigator with a request outlining the requirement to be met.

Comment

From all accounts and statistics, Crown Counsel make their charging decisions (and approve a majority of RTCCs on first submission) in a timely manner. According to the 2010/2011 Criminal Justice Branch Annual Report, 71% of RTCCs are reviewed within 5 days of submission.

In most cases, the reasons given for a no-charge decision or a request for further information are in accordance with the Guideline. The police do seek greater consistency in the decisions themselves and in reasons given for charge rejection of similar offences. This can vary according to location.

The Ministry has undertaken a number of initiatives to ensure the proper processing of RTCCs and resolution of issues with the police:

- Police/Crown liaison committees have been established at both a senior level for systemic issues and an operational level for day-to-day problems.
- Initial charge assessment is done by experienced Crown Counsel (although all counsel continue to assess the evidence during the life of a case). In those offices where numbers allow, there is a separate assessment section staffed by experienced counsel. In smaller offices, more experienced counsel does charge assessment whenever possible.
- The Ministry provides training for its staff at Crown conferences and through instructional materials available on the Branch intranet site.
- The Ministry has provided materials and training for police in the preparation of an RTCC. Of particular value is the recent creation of a checklist for the police setting out what is needed in an RTCC package for various offences.
- In high volume locales, Crown offices have instituted procedures to deal with off-hours work, such as having assessment Crowns and staff on duty at night and on weekends.
- The police and the Ministry have entered into MOUs (Memorandums of Understanding) detailing the expectations of the parties with respect to RTCCs and Disclosure.

In speaking to various police services, one common concern was the view that Crown Counsel too often reject the laying of administrative offences (fail to appear in court/fail to comply with bail conditions/breach of probation) and public order offences (wilful damage/causing a disturbance). Police view these types of charges as important for offender management in their communities. That is, offenders who breach bail or probation conditions must know that they cannot re-offend with impunity. Otherwise, there is no deterrent to their continuing misconduct.

Crown Counsel have a different perspective:

- **These charges often go hand in hand with substantive charges. Often, laying a separate breach charge would accomplish no more than proceeding on the substantive charge and advising the judge of the breach at sentencing.**
- **A stand-alone administrative charge may well be considered so minor by the court that only a nominal penalty would result, when alternative measures might accomplish the same end – making the accused responsible for his conduct.**
- **Occasionally, the offence itself is just part of the accused's more frequent anti-social (but not criminal) conduct and the proper context is not adequately detailed in the RTCC.**

However, where these kinds of charges are recommended by the police, several of the public interest factors in the Guideline seem at odds with one another:

Public Interest Factors in Favour of Prosecution

It is generally in the public interest to proceed with a prosecution where the following factors exist or are alleged:

(a) The alleged offender has relevant previous convictions or alternative measures;
(b) The alleged offender committed the offence while under an order of the Court;
(c) The offence, although not serious in itself, is widespread in the area where it was committed;
(d) The need to protect the integrity and security of the justice system and its personnel.

Public Interest Factors Against Prosecution

It may not be in the public interest to proceed with a prosecution where the following factors exist or are alleged:

(a) A conviction is likely to result in a very small or insignificant penalty;
(b) There is a likelihood of achieving the desired result without a prosecution by the Criminal Justice Branch. This could require an assessment of the availability and efficacy of any alternatives to such a prosecution, including alternative measures, non-criminal processes or a prosecution by the Federal Prosecution Service. Crown Counsel need not conclude, in advance, that a prosecution must proceed in the public interest if a referral for an alternative measure is not acceptable. Information with respect to the suitability of a candidate for diversion or alternative measure is a factor to be taken into consideration by Crown Counsel in reaching a final charge assessment decision;
(c) The loss or harm can be described as minor and was the result of a single incident, particularly if caused by misjudgment;
(d) The offence is of a trivial or technical nature or the law is obsolete or obscure.

Additional Factors to be Considered in the Public Interest

(a) the youth, age, intelligence, physical health, mental health, and other personal circumstances of a witness or victim;
(b) the personal circumstances of the accused, including his or her criminal record;
(c) the length and expense of a prosecution when considered in relation to the social benefit to be gained by it;
(d) the need to maintain public confidence in the administration of justice.

These competing factors can cause confusion between Crown Counsel and investigators and need to be examined more closely to determine if their respective views on these types of charges can be brought more into line with each other.

The Charge Assessment Decision – Police Appeal

The Ministry Guidelines set out an appeal procedure when the police disagree with a charge assessment decision:

Policy

Where the police disagree with a charge assessment decision, they should discuss their concerns with the Crown Counsel who made the decision and then follow the appeal procedure outlined below if not satisfied with that discussion.

Appeal Procedure

After discussing their concerns with the Crown Counsel who made the decision and if not satisfied with that discussion, the police should contact Administrative Crown Counsel as the first step in appealing a charge assessment decision.

If the matter is not resolved following a discussion with Administrative Crown Counsel, and a Chief Constable, Officer in Charge of a detachment or more senior officer of the RCMP disagrees with the charge assessment decision, Regional Crown Counsel may be asked to review the decision and respond to the police.

If a Chief Constable, Officer in Charge of a detachment or more senior officer of the RCMP, disagrees with the decision of Regional Crown Counsel, the Assistant Deputy Attorney General may be asked to conduct a further review of the charge assessment decision and respond to the police.

If upon exhaustion of this appeal process the police decide to swear an Information, it is anticipated that it would be sworn by, or on behalf of, a Chief Constable or the Assistant Commissioner of the RCMP, as the case may be, and that the Assistant Deputy Attorney General would be notified in advance of the Information being sworn.

Where Information has been sworn by the police contrary to a charge assessment decision by Crown Counsel without exhaustion of the appeal process outlined above, the Private Prosecutions policy applies (see policy PRI 1).

Comment

This was added to the Guideline following the recommendation of the Hughes Commission in 1987.

By all reports, it has never needed to be carried through to its ultimate end where the police have laid an Information against all advice from the Crown. Where there have been disagreements, they have been resolved through discussion between the police and Crown Counsel.

This is one aspect of this Guideline that should be amended. If a dispute goes to the Assistant Deputy Attorney General and the police lay an Information, the appointment of a Special Prosecutor should be mandatory, rather than leaving the decision to be made on a case-by-case basis. By the time the last stage is reached, both the proper administration of justice and its appearance dictate that someone other than Crown Counsel conducts the prosecution.

Pre and Post-charge Assessment – A Comparison

Pre-Charge

In a pre-charge regime, a police officer will investigate an offence and then prepare a Report to Crown Counsel (RTCC), including recommended charges, and forward it to the Crown. Only if Crown Counsel is satisfied that the evidence is sufficient to meet the Ministry's charging standard (evidentiary and public interest factors) will a charge be laid.

Sequence Summary:

1. ***Investigation***
2. ***Crown Assessment***
3. ***Information Laid***

Post-Charge

In a post-charge regime (all provinces except British Columbia, New Brunswick, and Quebec), an officer will investigate an offence and lay what he views as the appropriate charge(s). As soon as a charge is laid, a police report containing the evidence (or some of it) is forwarded to the prosecutor in time for the accused's first court appearance. As soon as the prosecutor has the police report, he /she will determine whether the evidence meets the charging standard of that province – evidentiary and public interest factors – and decide whether the charge should continue or be stayed.

Sequence Summary:

1. ***Investigation***
2. ***Information Laid***
3. ***Crown Assessment***

Comments

It cannot be overemphasized that in a post-charge system, once a charge is laid, it does <u>not</u> simply appear in a trial court months later without any assessment by Crown Counsel.

From the accused's first appearance, the Crown has a duty to continually assess the case according to that province's charging standard. This standard is similar in all provinces and is at a higher level (reasonable likelihood/reasonable prospect) than the police require (reasonable grounds) to lay a charge. If at the beginning, or at any time afterwards, the evidence fails to meet the charging standard, the charge must be stayed.

Every post-charge province has developed internal processes in its prosecution services to encourage the streamlining of issues and resolution of charges.

In all provinces, including BC, the courts, as part of modern court and case management, require the prosecution and defence to appear at an interim court proceeding(s) on more serious cases to ensure that they have discussed the case and either narrowed the trial issues or settled the case.

In either system, late or last minute stays can happen for a variety of reasons: missing/deceased witnesses, additional evidence putting the circumstances in a new light, and/or a change in attitude of the victim.

There is less difference between the two systems than appears on the surface. One of the only real differences is when the evidence is assessed by Crown Counsel:

- In a pre-charge regime, the adequacy of the investigation is assessed at an earlier stage. This benefits the efficiency of the court system but has some drawbacks, notably for police in the resources required to prepare an RTCC. As a plus, cases which for a variety of reasons ought not to go further are stopped or diverted, saving valuable police time from being wasted attending court.
- In either regime, the police will be required to provide an equal amount of information to the Crown long before the trial date, whether before the charge is laid or at some point after arrest and first appearance. The only difference is when it is provided.

Lastly and very importantly, in almost all post-charge provinces, the police and prosecution services have entered into formal or informal protocols calling for pre-charge consultation in serious cases and/or in specialized areas (such as larger frauds in Alberta). This effectively converts the process to a pre-charge approval regime, as the police would be very reluctant to lay a charge in a case where the Crown was of the view that there was insufficient evidence.

Such protocols also establish a mindset in the parties for other types of cases, so that there is little hesitation in either the investigator or Crown Counsel to call his counterpart for advice or additional information.

Pre- and Post-Charge Assessment – Pros and Cons

The main question asked by this Review – whether the province should revert to a post-charge system – assumed that it would be one in which the police would lay all criminal charges.

However, during discussions with various police services, a third option was raised: to allow the police to lay all summary conviction and certain lesser hybrid charges using a 'reasonable likelihood of conviction' standard.

What follows is not any adverse comment on the ability of the police to lay charges, nor to understand what is needed for a successful prosecution. The police, with significant additional costs and adjustments, could do the job. But the Crown can do it better.

As has been noted elsewhere, neither pre- nor post-charge regime is perfect, nor is either one inherently flawed. Both aim for the same result. It is a question of which regime a province chooses to enact.

The respective arguments (more fully set out in the Discretion to Prosecute Inquiry (1990) at pp. 20-27) as have been stated to me are:

Reverting to Post-Charge Assessment

1. **Police Independence**

   Police Position: It would affirm the historical independence and jurisdiction of the police to lay charges (Section 504 (s.504) of Criminal Code).

   Crown Position: The police s.504 argument is seductive but misleading. The issues of independence and authority are separate. S.504 has been in the Code for almost a century and was inserted at a time when police not only investigated crime but also acted as the prosecutor. It predates the creation of separate prosecution services.

   Police independence lies in its investigative authority. No one can or should improperly influence them in who or what or how they investigate. The charge assessment system is not connected to that authority. There is no case or charge to assess until the police bring one forward.

   Under s 504 of the Code, anyone can lay an Information. This does not give exclusive authority to do so to the police. So it follows that the charge assessment system in BC does not contravene the law. The police services in BC agreed decades ago, and confirmed that agreement more recently by the MOUs signed by the police and the province, to the system now in place. They still lay the charges, subject to approval of the Crown.

2. Transparency

Police Position:. The process is not open.

This argument has several aspects:

1. There are times when no explanation, at least initially, is given to the investigator for a no-charge decision. This is not productive to either the education of the investigator as to what he needs for a successful investigation nor to the Crown/police relationship.

2. When the police do not know why a charge was not approved, they cannot explain the decision to the victim and may in turn be criticized by the victim. In fact, the police have done all that they believe is necessary.

3. The victim does not get his "day in court" and doesn't know why.

4. If no charge is approved, the offender's identity remains unknown to the public.

In a post-charge regime, if a charge is laid by the police and then stayed by Crown Counsel, the public will know that a person was charged and brought before the courts. The investigator will know what happened. If a victim questions why the case didn't go ahead, it should be the prosecutor's responsibility to answer. To put it in other terms, an accused has his alleged misconduct noted on the public record, even if the charge is eventually stayed.

Crown Position: When talking of a decision to lay or not lay a charge, it is important to examine what happens in each of a pre-charge vs. post-charge regime.

In a post-charge system, the police investigate and lay a charge. It is not until an accused is charged that his name becomes public. The police do not usually, nor should they, issue public statements about whom they are investigating until a charge is laid. The result is no different in a pre-charge regime. No accused's name becomes public until a charge is laid.

The police argue that there is no public accountability in a pre-charge regime, as no one knows about the suspect's conduct if he is not charged. It is further argued that the result in a post-charge regime is preferable, for if a person is charged, appears in court and then has the charges stayed, the public at least knows about the conduct. This argument confuses the purpose of the justice system. It is to determine the sufficiency of evidence, not out an accused where there is insufficient evidence.

If a charge is laid and then stayed because of a lack of evidence, an accused may be exposed to all the negative consequences of being charged – publicity, employment

problems, border crossing problems, child access problems if a family violence charge – when he arguably should not have been charged at all. This is particularly so in cases of sexual misconduct, where no amount of explanation after a stay can undo the damage to an accused's reputation. Some may say that this argument is one for the accused or his counsel to raise but it is the responsibility of the Crown to see, as far as possible, that the fair and proper thing is done.

The high-profile case of Michael Bryant, a former Ontario cabinet minister may serve to illustrate what can happen when a charge is laid on insufficient evidence. Bryant was driving in downtown Toronto, became involved in a heated argument with a cyclist, attempted to drive off and was involved in a collision, resulting in the cyclist's death. Within days he was charged with very serious charges. A media firestorm ensued. As the investigation proceeded, it became apparent that there was another side to what had happened and that he had committed no criminal offence. The charges were very publicly stayed. Bryant had the resources to defend his name publicly, but what of someone in his situation with lesser resources?

It is said that it is unlikely that this situation would have occurred in BC, as the requirement for a complete investigation and RTCC would mean that no charges would have been laid.

3. Unnecessary Police Resources

Police Position: It would save the police from expending as many resources on a full 'disclosure ready' court brief (RTCC) before a charge is even laid, as a number of persons charged with low level offences plead guilty almost immediately and less information is needed.

Crown Position: Many minor offences require only a very basic RTCC and material, so not much police time is saved. In all cases, even those where the accused pleads guilty very early in the process, it is essential that Crown Counsel know all of the circumstances of the offence so that the court can know and impose the appropriate bail conditions or sentence. A very brief summary of the offence risks an accused getting an inappropriately lenient bail release or sentence because Crown Counsel does not have all of the details of the accused conduct to tell the court

For those lesser charges that proceed to trial, an accused is entitled to disclosure of all of the evidence. So the investigator will need to provide a complete package in any event, be it right at the beginning or later in the process. In fact, most defence counsel will require full disclosure before the accused enters a plea, within several weeks of the first appearance.

4. Usurping the Court's Role

Police Position: Under the present system, the Crown, via the charging standard, puts itself in the position of the judge. It is the perception of some police that Crown Counsel requires a certainty of conviction before it will approve a charge. A common phrase used is "let the judge decide". Reverting to a post-charge system would allow the judge to make the decision, not the prosecutor.

Crown Position: A 'letting the judge decide' approach ignores certain realities. In a post-charge regime, Crown Counsel will assess every case coming into the system by the Branch standard. By whatever standard, either 'substantial' or 'reasonable', the Crown has an ongoing responsibility as an agent of the Minister of Justice to assess the evidence in his/her cases to ensure that only the proper cases go forward and absorb precious court resources. To merely stand by and let whatever charges are laid proceed without further assessment is not only a recipe for a paralyzed court system but also a failure to fulfill a duty.

The criminal justice system can be looked at as a series of filters, with each successive stage employing a finer screen:

a. The police use the screen with the widest mesh – 'reasonable grounds'. Once evidence meets that standard, a charge can be recommended to the Crown.
b. Next comes the prosecution with either a 'substantial likelihood' or a 'reasonable likelihood' test, being a finer mesh.
c. If the evidence is sufficient to pass through that screen, the court can convict only if the evidence is fine enough to pass through the finest mesh – "beyond a reasonable doubt."

In the end, only those against whom the evidence is the strongest can be found guilty.

5. Efficiency

Police Position: Allowing police to lay a charge is more efficient. Using court liaison officers to review the RTCCs prior to submission and then lay Informations upon Crown Counsel approval makes for convoluted paper trails and can result in delays.

Crown Position: The public appearance is more objective (the same person conducting the investigation doesn't decide on charges) and efficient (need for fewer replacement Informations).

6. Police Morale

It would improve police morale and 'buy-in', as officers who are now discouraged by Crown Counsel's no-charge decisions, particularly on administrative offences, would become more engaged as they assume more responsibility. It would also improve the quality of the initial reports as the police would rely on the prosecutors less in the initial stages.

7. Better Investigations

Police Position: There are some investigations that would be advanced by charges, even if all of the investigation was not complete. For example, in a gang case, if an accused were charged and in custody, witnesses may feel more comfortable coming forward to the police.

Crown Position: This argument has some validity but the cases where this would apply, although generally more serious, will be few. If witness protection is a concern, there are other avenues to accomplish this

8. Offender Management

Police Position: A repeating offender charged, brought before the court and released on bail, would be subject to bail conditions. This can facilitate offender management in the community. If he is not charged pending completion of the complete report, he may reoffend pending RTCC approval.

Crown Position: This can be true but it is a question of whether this goal can be achieved through other means so as to meet the concerns of the police while limiting the new charges coming into the system.

9. Importance of Lesser Offences

For lesser offences, not charging offenders has negative effects:

- It leads to public and victim disenchantment with the system: they retreat from lawful enjoyment of public facilities because of illegal activities of others.
- It fosters disrespect for the law: people who obey the law see others disobey it with no consequences.
- It promotes crime: petty offenders who see no consequences to their actions may graduate to more serious crime.

Other Arguments

1. **The police are experts in investigations. Crown prosecutors by their training know the law. Given the complexity of the law today, it is unfair to expect the police to master the subtleties of the criminal law as well as their other responsibilities.**
2. **The Charter clock starts to run from the laying of an Information, not from the beginning of the investigation. Any time spent in compiling an RTCC package does not count towards a delay argument. If a charge is laid and further time and court delay is needed for disclosure or additional investigation, that time counts towards a Charter breach of delay.**
3. **If the police are able to lay charges, it is inevitable that additional charges – be they summary conviction or hybrid – will enter the system, even using a 'reasonable likelihood' standard. These additional charges will have to be dealt with, and Crown and court time used, when there may be other ways to address the same problem (Alternative Measures/revocation of bail) rather than a separate charge.**
4. **It is human nature (and shown by the experience of post-charge jurisdictions) that once a charge is laid for lesser offences, an investigator has other cases to deal with. If follow-up investigation is needed, it can take a back seat to more current cases and be more difficult to obtain. All the while the Charter clock is ticking and more interim court appearances are needed. As well, this can lead to delays in being able to make a decision as to guilty pleas or whether the case should be stayed or withdrawn.**
5. **An argument is sometimes heard that the BC system results in an inordinate number of stays and withdrawals and that it is less efficient than a post-charge system.**

From the Canadian Center for Justice Statistics, we can get a picture over several years:

	Fiscal year	Total Decisions	Guilty	Acquitted	Stay/ Withdrawn	Other
Alberta	2007/2008	56,948	34,498	656	20,747	1,047
Alberta	2008/2009	57,877	37,320	656	18,748	1,153
Alberta	2009/2010	58,397	37,082	649	19,490	1,176
British Columbia	2007/2008	47,821	33,213	1,001	13,249	358
British Columbia	2008/2009	47,000	33,144	1,129	12,337	390
British Columbia	2009/2010	45,736	31,978	993	12,425	340

From this we can see that BC, with a larger population, has fewer charges coming into the system than Alberta. One reason for this is the front end screening system in BC. As well, we can calculate percentages of stays and withdrawals to total decisions:

	Alberta	BC
2007-8	36.4%	27.7%
2008-9	32.4%	26.2%
2009-10	33.4%	27.2%

There can be many variables in any set of statistics but one note of explanation is needed here: Stays and withdrawals are not just those where there was insufficient evidence. Those numbers include cases where an accused pleaded guilty to some charges and others were withdrawn or stayed. In fact, those situations may make up the bulk of the numbers in that column.

Again, the pre-charge assessment process in BC can be seen to screen out charges that Alberta must deal with later and with less efficiency.

This is but one set of numbers and Alberta is but one province but it does show that over several years, in comparison to at least one post-charge province, BC compares favourably.

Comment

In my interviews, most of the players – judges prosecutors, defence counsel and others supported retention of the pre-charge system. There is a segment of the police community which expressed a desire to return to a post-charge system. Their concerns range from historical and constitutional to the practical. These have all been outlined above.

But there is no real consensus.

Many of the officers to whom I spoke have had policing experience in post-charge provinces and for a variety of reasons, generally prefer working in a post-charge regime. But they also have been in BC for enough time to adapt to the pre-charge system. Others have policed in BC for their entire careers.

They recognize that reverting to a post-charge system would involve significant training and cost issues. Most significantly, they acknowledged that reverting would not make the system more efficient. It would in fact add to the charges now coming into the system.

However, they are most concerned over resource and offender management issues and consistency of advice received from the Crown. They do not particularly want to take back the charging function but are prepared to do so if that is the only answer to these practical issues.

It is also useful to consider that the other two pre-charge provinces – Quebec and New Brunswick – strongly support the pre-charge process and would oppose any move to go back to a post-charge system. And in at least several post-charge provinces, justice ministries would not be averse to converting to pre-charge, but with the protocols in place, their systems work efficiently.

The arguments of the police are not without merit but do they outweigh the benefits of the existing system? Are there other avenues to address their concerns?

The real concerns of the police, as expressed to me, lie not in the charging standard but with parts of its daily application. They are more resource-founded than in any position of authority or jurisdiction.

Effects of Reverting

If British Columbia were to revert to a post-charge system, there would be many costly adjustments needed:

- **Police would need more reviewing officers and would need enhanced reviewing and legal training. This could be a much bigger adjustment than anticipated. In a post-charge regime, the police, in laying charges, do little actual screening. Charges are laid when there are "reasonable grounds" as per s. 504 of the Code. There is little assessment of any viable defences, nor can the police be expected to be current on sophisticated Charter issues and decisions. So if they were to take back the charging function, officers would need significant legal training and a sea change mindset shift.**
- **With more charges and more trials, more officers would have to attend court as witnesses.**
- **Crown Counsel – with more charges, would need more prosecutors and staff to assess and try the charges coming into court and would need to devote more time to training police.**
- **Witnesses – with more trials, would need to take more time off work.**
- **Court – with more charges, would need more court time (guilty pleas/trials) – and more judges and staff.**
- **Public – with more cases and more accused coming into court – would need more public money spent on all parts of the system.**
- **Municipalities and province – more officers would be needed – at a cost to these governments.**

Recommendations

Terms of Reference

1. Is the Current Charge Assessment Standard of 'Substantial Likelihood' Correct?

The BC standard is that of 'substantial likelihood' while that of all other provinces is either 'reasonable likelihood' or 'reasonable prospect'. There is no evidence that either standard produces markedly different results.

The phrase 'substantial likelihood' has been carefully considered and refined over time. While there is a perception by some that the standard is too high, it is supported by most players in the system. There is no suggestion that the public has concerns with the standard itself.

The differences, in theory and practice, have been debated at length (see: Discretion to Prosecute Inquiry – Appendix) and continue to be. There are conflicting opinions as to whether there is any real difference at all.

Since there is no persuasive evidence that the standard too high, there is no justification for changing it.

Recommendation 1: That the present standard of 'substantial likelihood' be retained.

2. Should B.C. Retain the Pre-Charge Assessment Model or Adopt a Post-Charge Model?

The present pre-charge assessment system was adopted decades ago in BC in response to large numbers of inadequate police reports and charges. The quality of reports and charges improved when the new system was adopted.

While police are far better trained now than in the past, the fact remains that they are experts in conducting investigations. Crown Counsel are experts in assessing legal issues and evidentiary requirements.

The pre-charge regime is well thought out and proven and its retention has been advocated on several occasions by learned and experienced Commissioners. In the end, it is not far different from the post-charge system. Changing back would not make the system more efficient, nor would the quality of justice improve. Nor would it be a real answer to the practical concerns of the police.

The cost both in money and human terms to revert would be substantial.

Recommendation 2: That the pre-charge assessment process be retained in its existing form.

3. What Improvements to the Assessment Process Can be Recommended?

(a) The Need for Directives

The nuts and bolts of the screening process are contained in the Charge Assessment Guidelines. They have been developed and refined over the years in response to other Inquiry recommendations and daily experience.

There have been no directions issued by the Assistant DeputyAttorney General with respect to who should be doing charge assessment. Nor need there be any. Daily experience and the abilities of those in charge of the various Crown Counsel offices have resulted in Charge Assessment Crowns with the necessary experience, wherever possible, being given that assignment.

There have been and continue to be substantial educational initiatives undertaken by the Ministry through conference presentations and online materials.

The existing Guidelines themselves do not need to be made more specific. They provide good guidance to Crown Counsel, yet allow for flexibility in adapting to local conditions.

Recommendation 3(a): No directives are needed.

(b) Who Does Pre-Charge Assessment / Where Is It Done?

In the larger Crown offices, separate units of experienced prosecutors on longer term assignments perform the function. In smaller and mid-size offices, there is not the luxury of devoting separate long-term resources, but senior prosecutors do the assessments whenever possible.

As a general rule, Crown Counsel doing charge assessment should have a minimum of 5 years prosecutorial experience. This is a somewhat arbitrary number, as the content of that 5 years of experience must be looked at. The more trial experience that a prosecutor has the better feel he/she will have for what really happens in court and what are realistic charges/sentences.

There is always the caveat that smaller offices may not have the experienced staff to meet this suggestion.

The suggestion of a centralized charge approval unit for the province has drawbacks.

BC is a highly diverse province geographically and culturally. Crime and public interest considerations vary from place to place and over time. A centralized unit with (or without) more detailed guidelines would almost inevitably be slower and more cumbersome and could jeopardize local relationships between Crown Counsel and police (and the communication that goes with them) More importantly, it would result in the loss of local sensitivity in the

charge assessment process. This local sensitivity is recognized in the public interest factors in the existing Guideline.

Recommendation 3(b): Wherever possible, the assessment function should be done by local Crown Counsel who have significant trial experience.

(c) Timeliness/Content of Assessment Decisions

The feedback that I received indicates that the timeliness and content of Crown decisions on charge assessment varies throughout the province. This is to be expected, given the variability of office size, available resources and workload. For most files, the majority of RTCCs are reviewed within several working days. More serious cases benefit from more immediate Crown/police liaison and are streamlined once the police investigation is complete.

The timeliness of communication with the police needs to remain flexible, and attuned to local conditions. Further written guidelines in this area can be counter-productive. But the Crown needs to remain cognizant of the need for sufficient explanations for no-charge decisions

Recommendation 3(c): That no further guidelines setting out timelines need be issued but that the Ministry investigate ways to enhance Crown/police communication at an early stage in the process.

(d) Police Appeal Procedure

This process was put into the Guidelines in response to a recommendation in the Hughes Report. It has not, in anyone's memory, been used to its end, but is an important confirmation of the authority of the police to lay a charge.

However, the need for a Special Prosecutor, if the appeal process is fully invoked, should be formalized.

Recommendation 3(d): That the Guideline be amended to provide that where the appeal process has been exhausted and the police lay an Information, a Special Prosecutor will be appointed.

(e) What Public Reporting, if Any, Should Occur Regarding Charge Assessment Decisions?

The first part of this question focuses on the transparency of individual charge assessment decisions and has been discussed in detail at pp 29-30. As noted there, in either a pre or post-charge regime, a suspect's name need not and should not be made public unless and until a charge is approved/laid. Once a charge is laid, then subject to any statutory restrictions (e.g.- Youth Criminal Justice Act/court imposed publication bans), the name of the accused is a matter of public record. The laying of the charge can be considered as the public reporting.

Where there is a no-charge decision, there may be occasions when it is proper and necessary and in the public interest to explain the reasoning behind the decision to the victim (and in rare cases to the public). One of the concerns of the police now is that they are sometimes called upon to liaise with the victim and to try to explain a no charge decision that they may neither agree with nor fully understand. Since it is a decision of Crown counsel, it seems more logical that the prosecutor (or the Ministry issue a public statement if that is called for), either alone or in conjunction with the investigator, and subject to any privacy and operational concerns.

In the aggregate, statistics are now kept as to numbers of RTCCs submitted and approved/rejected. Collection of these numbers should be continued as they can highlight trends or problem areas that need to be addressed.

Recommendation 3(e): Where there is a no-charge decision, there should be no public reporting or comment, as the name of a suspect should be kept confidential by the police and prosecutor until a charge is laid.

On those occasions when a no-charge decision is made and the public interest requires an explanation to the victim or the public, it should be the responsibility of the prosecutor (or the Ministry), either with or without the investigator, to do so.

Statistics on the numbers of RTCCs submitted and approved/rejected should continue to be compiled.

4. Public Order and Administrative Offences

A constant thread throughout discussions with police is their desire for the laying of more charges for public order and administrative offences. It is their view that the Crown rejects too many of these charges. The positions of the Crown and the police are set out earlier in this Report.

As there is some disconnect here, this issue merits further discussion at a provincial level.

Recommendation 4: That the Ministry review the issue of the laying of public interest/administrative offences to determine how much of the police concern is borne out by statistics and to examine initiatives by which this concern may be addressed.

5. Police Resources Required for RTCCs

A continuing police concern is that of the amount of police resources required to produce a disclosure ready file before a charge assessment will be done.

As elsewhere, this issue varies from place to place.

Conversely, there are areas where the police might consider alternative investigative methods to reduce the drain on their own resources.

Recommendation 5: That the Ministry review the issue of police resources to determine if there are RTCCs that could be assessed with a reduced investigative package.

Other Recommendations

These are outside the strict parameters of the Terms of Reference but are related to the workings of the criminal justice system and merit comment.

6. Crown Office Resources/Structuring

One of the concerns expressed was the number of different Crown Counsel who are responsible for a file during its journey through the system, particularly in some of the larger offices. Larger offices must, out of necessity, because of their large workloads, do this. With the great bulk of files, there are different Crown Counsel who handle first appearances, bail, arraignments and trials. This can result in differing views of the same file. This will happen as long as humans and not computers go to court.

But there may be value in trying to determine if there are ways to reduce the number of Crown Counsel who handle a file in larger offices. Other provinces have developed systems to address this concern. Alberta has initiated a file ownership system that has been effective in getting files into the hands of trial prosecutors at an early date.

Recommendation 6: That the Ministry investigate whether there is value in instituting a pilot file ownership project in Crown offices.

7. Dedicated Crowns/Police

Several initiatives have been undertaken by the Ministry in conjunction with local police to dedicate specific Crown prosecutors to specific local problems. In Surrey and in Vancouver, Crown Counsel have in the past been dedicated to the areas of property crime and prolific offenders. These projects proved very successful, not only because of the dedication and efforts of the Crown Counsel involved but also because the police had one person to contact with all questions about their investigation. This highlights the value of good Crown/police communication.

Could this approach work for the police as well? Would it pay dividends to assign a police officer to a Crown office for some longer period of time to work with the charge approval Crown Counsel to gain a better appreciation of the factors that the Crown looks at in assessing files?

Recommendation 7: That the Ministry examine whether there would be value in re-establishing a dedicated Crown Counsel project

That the Ministry work with the police to examine the feasibility of a pilot project to assign a police officer to work in a Crown office with the Charge Assessment Crowns.

8. Police Training

New BC police recruits receive their training through one of two vehicles. The RCMP trains its officers in Regina. Municipal officers attend at the Police Academy section of the BC Justice Institute. There is a basic legal component to all of this training but a new officer must master a multitude of street skills in a short time. He/she is not being trained to be a lawyer.

Newly minted officers are mentored by more experienced officers once they are fully accredited. Depending on workload, demographics and transfers, this field supervisory training can be of variable effectiveness.

All police services require their officers to engage in on-going training.

The most knowledgeable people to assist in the legal training of police officers are Crown Counsel. The degree of involvement of Crown Counsel in police training in BC has varied, depending on location, time and availability. Where they have the resources, Crown offices have played an important role in police training.

This interaction has the additional benefit of exposing Crown Counsel and police officers to the perspectives of the other

Recommendation 8: That the police services and the Ministry investigate the feasibility of providing officers with enhanced training on legal concepts and evidentiary requirements and that the role of Crown Counsel in this training be increased wherever practicable.

9. Police Reports

While great strides have been made in the quality of police reports, there is no system that cannot be improved.

The focus of this review has been on the charge assessment process. Integral to the process is the quality of police reports. Some recent initiatives show that in some locales, the quality of reports may still be problematic.

Larger police services dedicate experienced officers to review reports before they are sent to Crown Counsel. This has improved quality in those areas but modern technology may help even more.

As an example, the Edmonton Police Service has recently developed its own computerized file review system (IMAC) that has markedly improved the quality of its reports. Other services have signalled an interest in this program.

Recommendation 9: That police services investigate the need and feasibility of computerizing and enhancing their report reviewing processes.

10. Legal Aid and Court Delays

One of the issues discussed during this review was the legal aid system in BC. It has been the victim of substantial budget cutbacks over the past few years.There are now far fewer lawyers who are willing to do legal aid work.

Anyone who has been in any courtroom in Canada will know that an unrepresented accused at trial takes up far more court time than someone who has counsel. The judge must take time to explain the process to the accused (often repeatedly).

One area where legal aid continues to help is through Duty Counsel. Private counsel are retained by the Legal Services Society for the day or the week to assist accused at non-trial appearances. But by the short term nature of their appointments, continuity and some familiarity with local issues and personnel can be lost.

Some other provinces (e.g., Alberta) have full-time salaried Duty Counsel working out of the major courthouses. These groups provide continuity of service and advice and as a by-product have earned the confidence and trust of the local bar and judiciary.

Recommendation 10: That the Legal Services Society examine the feasibility of employing Duty Counsel on a longer term basis.

11. Additional Resources

Although it has been made clear many times that government resources are tight, police, judges and other officials all confirmed to me that the charge assessment Crown Counsel are severely overworked. This varies by location but is acute in some of the larger offices. This apparently has been exacerbated by the court closures in 2002, which closed a number of courthouses and Crown offices and relocated their workloads, in some cases to offices which were already at capacity.

But it seems that additional Crown resources have not kept pace with other developments:

- **During the past few years, additional funding has been made available to the police. More officers have been hired. When that happens, more charge recommendations inevitably follow. More RTCCs add to the Crowns' workload.**
- **Bill C-10 (the federal "Tough on Crime" legislation) will add to the workload of both the police and the Crown (and others) but to an unknown degree.**
- **As the population of the province grows, the volume of crime will inevitably increase.**

Recommendation 11: That the Ministry continue to develop measures to gauge the workload of its staff and the effects of additional federal crime measures and population growth.

12. Educating the Public

A genuinely informed public is essential to societal acceptance of any justice system. Uninformed comments about what is happening in a system lead to generalities, wrong conclusions and misunderstandings.

Traditionally, the criminal justice system has not been effective in explaining itself to the public. Long academic articles do not reach those who need or want to understand the system. Responses to questions about an on-going case – "it is before the courts and we cannot comment" — while correct, can appear evasive.

Some of the dissatisfaction and angst surrounding criminal justice in all provinces flows from public ignorance of its real workings. This is fed by popular TV shows (e.g., Law and Order, CSI), from which the viewing public concludes that our system is similar to what is shown on television. Little could be further from the truth.

It is time for the Ministry, together with the courts, defence bar and the police, to adequately explain the system to the public. This by itself should quell many of the negative comments we hear.

Recommendation 12: That the Ministry examine its present approach to public statements and media relations with a view to proactively educating the public on how the justice system works and the daily roles and responsibilities of the Criminal Justice Branch and Crown Counsel.

Summary of Recommendations

Recommendation 1: That the present standard of 'substantial likelihood' be retained.

Recommendation 2: That the pre-charge screening process be retained in its existing form.

Recommendation 3(a): No additional formal directives are needed at this time.

Recommendation 3(b): Wherever possible, the assessment function should be done by local Crown Counsel who have significant trial experience.

Recommendation 3(c): That no further guidelines setting out time lines be issued but that the Ministry investigate ways to enhance Crown/police communication at an early stage in the process.

Recommendation 3(d): That the Guideline be amended to provide that, where the appeal process has been exhausted and the police lay an Information, a Special Prosecutor will be appointed.

Recommendation 3(e): There is no need for public reporting of no-charge decisions, for either cases where there is a specific victim or those where there is no named victim.

Recommendation 4: That the Ministry review the issue of the laying of public interest/administrative offences to determine how much of the police concern is borne out by statistics and to examine initiatives by which this concern can be addressed.

Recommendation 5: That the Ministry review the issue of police resources to determine if there are RTCCs that could be assessed with a reduced investigative package.

Recommendation 6: That the Ministry investigate whether there is value in instituting a pilot file ownership project in Crown offices.

Recommendation 7: That the Ministry examine whether there would be value in re-establishing a dedicated Crown Counsel project.

That the Ministry work with the police to examine the feasibility of a pilot project to assign a police officer to work in a Crown office with the charge approval Crown Counsel.

Recommendation 8: That the police services and the Ministry investigate the feasibility of providing officers with enhanced training on legal concepts and evidentiary requirements and that the role of Crown Counsel in this training be increased wherever practicable.

SCHEDULE 11

Recommendation 9: That police services investigate the need and feasibility of computerizing and enhancing their report reviewing processes.

Recommendation 10: That the Legal Services Society examine the feasibility of employing Duty Counsel on a longer term basis.

Recommendation 11: That the Ministry continue to develop measures to gauge the workload of its staff and the effects of additional federal crime measures and population growth.

Recommendation 12: That the Ministry examine its present approach to public statements and media relations with a view to proactively educating the public on how the justice system works and the daily roles and responsibilities of the Criminal Justice Branch and Crown Counsel.

Conclusion

At the beginning of this report, I mentioned the commitment of the people to whom I have spoken. This bears repeating:

The abilities and enthusiasm of judges, prosecutors, police, defence counsel and others who are part of the system are remarkable. The citizens of British Columbia are fortunate to have these people superintending criminal justice in the province. It is unfortunate that this fact is so rarely noted.

The work I have done on this project has reaffirmed for me certain facts that hold true regardless of the system in place:

- **Prosecutions have become much more complex in ways that are beyond the authority of the provincial government to change. Truly effective improvements to the trial process can come only from the Bench (if given enhanced case management authority) and the federal government. Recommendations in these areas are more properly within the mandate of other reviews.**
- **Expending resources, whether those of the prosecution or police, pays greater dividends when concentrated at the beginning of the process. This comes at a cost but results in a more efficient justice system.**
- **Location and personalities are important. Factors such as the size and workload of Crown Counsel offices, court locations and police detachments and the experience of police officers and prosecutors in a given area can determine whether a part of the process is an issue in one place but not another. It is preferable to have policies and guidelines that are flexible enough to be adaptable to local conditions.**
- **While there must be formal protocols in place to establish minimum requirements on certain processes, one of the most valuable assets for any Crown Counsel or police officer to have is a good day-to-day working relationship with his or her counterparts. These need not in any way affect their respective independence. Simply being able to call someone you know can help clear up confusion or misunderstanding. Prosecutors and police have separate and independent roles but have similar values and goals: the appropriate enforcement of the law and the proper administration of justice. The working relationship in BC is good, the result of hard work over time by many people. But any relationship can be improved with better communication and understanding of each other's roles.**

This Review has focused on the charge assessment regime in BC. The process is neither broken nor in crisis. Parts of it bear examination and possible refinement but no wholesale changes are needed.

Appendices

A. Terms of Reference – Charge Assessment Review

B. Terms of Reference – Chair-Justice Reform Initiative (Geoffrey Cowper Q.C.)

C. Green Paper – Modernizing BC's Justice System (February 2012)

D. Crown Counsel Act

E. Crown Counsel Policy Manual – Charge Assessment Guidelines

F. Previous Commissions/Inquiries

i. Access to Justice: Report of the Justice Reform Committee (Hughes) 1987 (excerpt)

ii. Discretion to Prosecute Inquiry (Owen) 1990 (excerpt)

iii. Special Prosecutor Review (Owen) 2010

iv. Alone and Cold (Davies) 2011 (excerpt)

G. Participants

H. Other Jurisdictions – Links to Crown Prosecution Policies

- Alberta
- Saskatchewan
- Manitoba
- Ontario
- Quebec
- New Brunswick
- Nova Scotia
- Prince Edward Island
- Newfoundland and Labrador
- Public Prosecution Service of Canada

Appendix II

White Paper on Justice Reform

PART TWO:

A Timely, Balanced Justice System

February 2013

BRITISH COLUMBIA

Ministry of Justice

Contents

Minister's Message

I am pleased to present the ***White Paper on Justice Reform, Part Two: A Timely and Balanced Justice System***.

This is the second part of our action plan for creating a transparent, timely, and balanced justice system for British Columbians. ***Part One*** focused on establishing a new model for transparent governance of the system and on building business intelligence capacity to create a system that is capable of reform and renewal. ***Part Two*** builds on this foundation and outlines a plan for reforming justice services to the public so that our system is timely, balanced, and more responsive to the needs of citizens.

This plan reflects a wide-range of advice, consultation, and recommendations from participants in our justice system. Last year, government asked Geoffrey Cowper, Q.C. to conduct a review of the criminal justice system and provide advice on how it could be reformed. Government also asked Gary McCuaig, Q.C. to review the charge assessment process used by the Criminal Justice Branch to determine which cases referred by police are prosecuted. As well, I sought the advice of the Legal Services Society on legal aid reform that could contribute to broad justice system reform. At the same time, government initiated an extensive stakeholder consultation process in order to develop a strategic plan for public safety and policing in B.C. This plan is being released for further public consultation at the same time as ***White Paper, Part Two***.

In December, government released the report from Commissioner Wally Oppal on the Missing Women Commission of Inquiry. This report provided a comprehensive review of the circumstances surrounding the investigation of missing and murdered women from Vancouver's Downtown Eastside and made extensive recommendations for improvement. Government has had the opportunity to do an initial assessment of the report, and ***White Paper, Part Two*** outlines our early response. A thorough response to all of the report's recommendations will take time and will be ongoing over the coming months and years, but we are committed to working with communities, police, and other levels of government to implement change.

Part Two presents innovative solutions that allow us to begin work immediately on meaningful changes to the system within the resources we currently have available to us. It also presents intended reforms that we know are needed in our system if we are to achieve our visionary goals. We are committed to implementing all of the reforms we have put forward in this plan, but some will take longer than others and will be fully implemented as additional funding becomes available.

We have already made progress on the commitments that we made in ***Part One,*** and I invite you to take a look at the chart at the end of the document where this progress is outlined. We plan to introduce legislation this spring to formally establish the Justice and Public Safety Council to provide governance and leadership for our system, and government is currently working with justice system participants to plan the first annual Justice Summit. I look forward to ongoing engagement and collaboration with all justice system participants as we move forward to implement the commitments we have made in both ***Part One*** and ***Part Two*** of the ***White Paper.***

Shirley Bond

Honourable Shirley Bond
Minister of Justice and Attorney General

Executive Summary

Our justice system must be modernized and reformed in a way that meets the needs of British Columbians. In October 2012, government released ***White Paper, Part One: A Modern, Transparent Justice System***, which presented an overall vision for justice reform and outlined a plan to create a transparent justice system that is capable of delivering timely, well-balanced services. ***White Paper, Part Two: A Timely and Balanced Justice System*** expands this reform plan to present a number of short-term and long-term steps that will provide innovative, front-line operations and services to the public in all areas of the law. These steps will put our reform goals into action and make our vision for a timely and balanced system into a reality. ***Part Two*** contains a combination of concrete action items that will begin immediately as well as visionary ideas for change that will be implemented over the long-term as funding becomes available.

Part Two identifies five key themes that form the basis of reform in all areas of the justice system, and within these themes, it presents seven action items to achieve our goals. Our system must focus on ***early assistance to citizens*** to ensure people receive the information, advice, and guidance they need to make early, informed decisions about their circumstances. In family law, government plans to implement a new Justice Access Centre in Victoria in 2013 and, in the future, expand services to rural and remote communities using technology. These centres involve collaboration with other justice agencies and provide services such as early assessment, information, legal advice, and referrals.

The justice system must deliver ***citizen-focused services***. For example, in civil and administrative law, government will shift disputes from the court system and deliver services in ways that meet the needs of the people that use the system. Government is currently working to establish the Civil Resolution Tribunal, which will provide an alternative to court for people seeking to resolve small claims and most strata property disputes. The tribunal will encourage people to use a broad range of dispute resolution tools, including email, phone, and video, to resolve disputes as early and efficiently as possible.

Our system must focus on ***smart choices at the start*** to ensure the most direct route is taken to reach solutions at the outset. It is well-known that the best way to reduce re-offending is to assess the risk to re-offend and match interventions accordingly. Government will act to share evidence-based information about risk assessment practices with police, Crown counsel, defence counsel, the judiciary, and other key justice system participants. This initiative will focus on making sure that offenders receive the right intervention at the right time with the goal of reducing behaviour which leads them to re-offend.

The justice system must value ***integrated and collaborative approaches*** to the way it serves citizens. One of the conclusions of the Missing Women Commission of Inquiry Report is that fragmentation of policing and ineffective coordination between police forces and agencies contributed to the failure of missing women investigations. Government will engage in a process with stakeholders to consider models for delivery of police services, ranging from further integration to the regional delivery of services, while retaining local community-focused policing.

As justice programs are continued and new reform projects undertaken, they must be implemented ***based on what works*** by using evidence-based practices. Government will establish and implement sustainable evaluation standards that are applicable to all justice reform projects, undertake data analysis to better understand system trends, and apply new approaches if research demonstrates the success of these programs and processes.

Moving forward, government will work to implement the commitments made in ***White Paper, Part One*** and ***Part Two*** and will engage with justice system participants to ensure ongoing coordination and collaboration on reform initiatives. Government will also continue efforts to keep the public informed about the progress we make on our goals for a more transparent, timely, and balanced justice system.

A. Reforming British Columbia's justice system

A well-functioning and accessible justice system is an essential component of all democratic societies. It is the responsibility of those who lead and manage the justice system to make changes that focus on modernizing it and meeting the needs of the people who use it. It is imperative that British Columbians have confidence that our justice system works to keep families and communities safe, is accessible and fair, and is managed within available public resources.

Balance provides access for citizens and timely outcomes

In February 2012, government launched the ***Justice Reform Initiative*** to hear from people who work in the justice system and members of the public about the types of reforms they believe our justice system needs. The two parts of the ***White Paper on Justice Reform*** outline a road map for achieving transformation. In October 2012, ***Part One: A Modern, Transparent Justice System*** outlined the overall vision for reform and immediate steps to improve governance, use business intelligence, and enhance planning and decision making to ensure a well-functioning, transparent justice system. Now, ***Part Two: A Timely and Balanced Justice System*** expands government's reform plan and presents steps that will be taken, both immediately and over the long term, to make sure that the justice system is both timely and balanced.

Government is committed to implementing its vision for reform and making the justice system more responsive to the needs of citizens. We plan to implement reform initiatives as quickly and broadly as possible within the resources available to us. ***White Paper, Part Two*** contains a combination of concrete action items that will begin immediately as well as visionary ideas for change that will be initiated in future years.

Reaffirming the vision of a transparent, timely, and balanced system

As described in ***White Paper, Part One***, our system must be strengthened in three ways to become ***transparent***, ***timely***, and ***balanced***.

A ***transparent*** justice system is one where all participants have a common understanding of system trends, where information that shows how the system is operating is shared broadly, and where those who manage and lead the system are ultimately accountable to the public for system performance. We must adopt modern business practices and technology to make sure justice resources are allocated and managed efficiently and effectively with proportionate and timely outcomes. By having a transparent system, we will be better able to provide the services and supports that the citizens of our province expect.

A ***timely*** justice system gives citizens the assurance that it is able to respond to and resolve problems within a reasonable amount of time. Delay is a real and pressing problem that threatens public confidence in the justice system. We must reform processes to reduce delays. While respecting constitutional roles, we need to adopt a common set of measures and goals that will reduce the time to resolution in all types of cases and hold system leaders accountable for taking action to achieve these goals. Putting in place a system-wide approach to scheduling, ensuring modern management practices are used, and focusing on results-oriented reforms will allow us to provide more timely justice to British Columbians.

A ***balanced*** justice system is one where efforts, expertise, and resources are carefully weighed against risk and applied in the most proportionate way across the system. This means that there is a full range of tools available to justice participants and citizens to

resolve legal issues. It also means that these tools are developed based on sound evidence so that we make sure that solutions are proportionate to the problems they are intended to help resolve. By continually striving for a balanced justice system, we can increase accessibility to justice for citizens and ensure earlier resolutions.

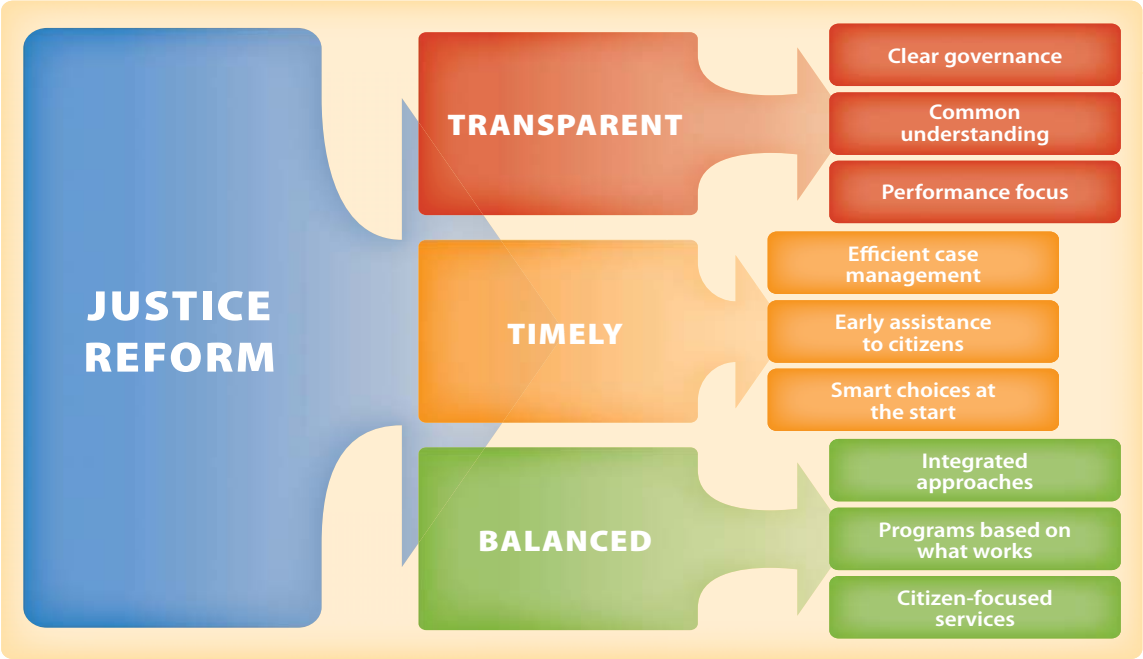

Figure 1: Elements of reform

White paper, part one

Drawing on the goals of transparency, timeliness, and balance, government introduced in ***White Paper, Part One*** its plan for innovations in a number of key areas. Transparency is the foundation for a modern justice system. We will ensure the appropriate structures are in place for ***clear governance*** to promote effective leadership and management across the system, a ***common understanding*** among justice system participants about how the system functions, and a clear ***performance focus*** for managers.

Part One included 10 action items to achieve these goals, and government has already made significant progress towards implementation. This spring we will introduce legislation that will formally establish a Justice and Public Safety Council to provide strategic leadership for justice reform and ongoing system planning. The proposed legislation will require the Council to make public an annual Justice and Public Safety Plan, as well as information on clear performance measures to assess progress towards justice reform goals. Government intends to release the first plan in fall 2013. The proposed legislation will also establish regular Justice Summits that will include participation from across the justice system. The first summit will be held in March 2013.

In addition to progress on system governance, government has also made progress on the development of a strategic transformation plan for information technology, created capacity to track information about the charge assessment process, and undertaken analysis of criminal cases before the courts to develop reliable data about these cases. We will continue work to implement the medium and long-term commitments made in ***Part One*** as we also take steps to implement commitments in ***Part Two.***

White paper, part two

White Paper, Part Two sets out a number of short-term and long-term steps that will be taken to make the justice system more timely and balanced. ***Part Two*** focuses on innovative, front-line operations and services to the public, as well as internal policy with respect to administrative, civil, criminal, and family law. It has also taken into consideration the findings and recommendations of the Missing Women Commission of Inquiry, which examined the circumstances surrounding the investigation of missing and murdered women from Vancouver's Downtown Eastside, and the key points from the B.C. Policing and Community Safety Plan, which is a strategic plan for policing and community safety in our province.

In addition to fostering the governance and business intelligence framework for transparency presented in ***Part One***, government will promote a cultural shift to a system that:

- focuses ***on early assistance to citizens***: government is committed to changing citizens' experience with the justice system. We want to create a system that increases the likelihood of early resolution, and reduces reliance on traditional, high-cost methods of adjudication. From the beginning of an individual's journey through the system, the options and responsibilities available will be made clear. Early assistance to citizens can help people consider the nature and complexity of their problems and reduce conflict, distrust, and fear. Providing information, education, needs assessment, and legal advice when citizens first enter the justice system will help them make informed decisions about their situation that will often lead to resolutions outside of court.
- ensures ***smart choices at the start***: Although only a small percentage of legal problems end up in court, our justice system is managed as though most cases will. Government is committed to ensuring that the right services and management are in place so that cases are directed down the most appropriate path to resolution from the outset. Making smart choices at the start is integrally linked to early assistance to citizens and focuses on the value of shifting resources to the front-end of the justice system. Once people become involved with the justice system, there may be a range of options available to find a solution to their problem. Early information, advice, and case management will ensure direct and timely resolution of cases.
- values ***integrated approaches***: Citizens are not concerned about which level or area of government delivers a service, only that they are able to receive services seamlessly. Citizens want a system that links justice services with health and social services to facilitate consistent approaches, and allows people to receive assistance when and where they need it. Government is committed to reform that ensures services are coordinated across the justice system, and that recognizes the underlying issues that bring people to the justice system. Taking a more integrated approach will avoid duplication, service gaps, and contradictory approaches. It will also provide greater opportunities to share knowledge and best practices among various service providers and ensure systemic issues are addressed.
- implements ***programs based on what works:*** Measurement is a necessary component of reform, and government is committed to implementing justice initiatives based on evidence and evaluating them based on clear objectives. Citizens must be confident that government applies public resources for the justice system in the most efficient and effective way possible. This means that projects, programs, and ongoing system processes must be initiated and

continued based on empirical data that shows they work. It also means that demonstrated success and best practices must be shared and applied consistently across the system.

- ***delivers citizen-focused services:*** Currently, people who encounter the justice system find that it does not always serve their needs, and they are not always able to participate in the management of their own cases. The result is a system that is cumbersome, delayed, and expensive for citizens, both as users of the system and as taxpayers funding it.

  Government is committed to placing the needs of citizens at the centre of service delivery. The justice system must be transformed to that of a service culture, where citizens' needs and outcomes are the focus, and investments in justice services align with best practices.

These five key themes form the basis on which government will implement reform in all areas of the justice system. Changes made in administrative, civil, criminal, and family law will be undertaken with a focus on early intervention, coordination and collaboration, best practices, and citizens' needs.

B. Timely and balanced justice: enhancing access to justice through early assistance

The justice system, unlike other government sectors such as healthcare or education, is not regularly used by citizens. For most people, entering the justice system is a rare occurrence, and can be an unfamiliar and daunting experience. Court is often assumed to be the only way to solve problems. However, the courtroom may not be the best option for many people, and some problems may require a solution outside of the court system. Access to justice must be seen as more than access to court. It involves a range of services that provide citizens with assistance and support to prevent problems where possible, reach early resolution where appropriate, and use the court system only when necessary.

Access to justice is more than access to court

Not only is court the most costly option for the justice system, it is also the most costly option for users. By making sure citizens have access to early assistance in the form of information, needs assessment, and advice, government can help people understand their options and make informed decisions. This will ensure the most efficient use of government resources, while at the same time better meeting the needs of citizens.

Action item 1: advance family justice reform

People often become involved with the justice system when families experience breakdown of a common-law or marital relationship. Research shows that taking these disputes through the court system is costly, intimidating, and lengthy. This approach often does not lead to solutions that help create positive relationships between family members, especially when children are involved. For more than a decade, government has implemented significant family justice reforms. The ***Family Law Act***, which will come into force on March 18, 2013, sets out the principles for these reforms. The new ***Act*** puts the best interests of children first and focuses on finding early resolution of disputes without going to court.

Early assessment, information, and referral

Government envisions a family justice system where people have access to information and guidance before they experience the breakdown of family relationships. We want to help people understand both legal and non-legal issues, so they are able to make informed decisions about their circumstances and so they understand the value of resolving disputes without litigation when possible. Resolving matters outside of court is usually better for those involved because it is faster, less expensive, and more flexible as family circumstances change.

Government already assists citizens through a network of 24 Family Justice Centres across the province as well as two Justice Access Centres in Nanaimo and Vancouver. Family Justice Counsellors offer information and education, early assessment, referrals, and dispute resolution to help people with issues related to separation and divorce. They help people find solutions, whenever possible, without going to court. However, if people do need to go to court, they are provided with the help they need to be better prepared. In four locations, early assessment is a requirement of the ***Provincial Court (Family) Rules*** (Rule 5). This means that parties must participate in an assessment meeting with a Family Justice Counsellor before their first court appearance, which often results in early settlements and diverts many cases from court.

Integral to early assessment is determining to what extent, if any, domestic violence may be a factor for families experiencing separation or divorce. The assessment process helps people understand what

services may be appropriate, including dispute resolution services such as mediation. If safety, including the safety of children, is an immediate concern Family Justice Counsellors assist with safety planning.

Commitment: Government intends to expand mandatory early assessment to other court locations in the province.

Justice Access Centres provide even greater assistance to citizens. They are unique in that they provide a single point of entry for family and civil justice services and involve collaboration with other agencies. This approach recognizes that people come to the justice system with multiple issues, including those related to housing, debt, and employment. In addition to the information, assessment, and referral services provided at a Family Justice Centre, people also receive support from other agencies, sometimes located onsite, to help find solutions to underlying problems instead of seeking to resolve only the legal dispute.

Commitment: A third Justice Access Centre is scheduled to open in Victoria in late 2013, and in the coming years, government intends to use technology to provide Justice Access Centre services to rural and remote communities. Government will also evaluate the Justice Access Centre models to determine the best model for service delivery in different communities around the province.

Family legal aid reform

It is important to recognize that there are situations where people need legal information or advice from a lawyer, even when they intend to resolve disputes outside of court. Strategically providing access to legal advice at the right time is proven to increase the likelihood of early resolution. Presently, the Legal Services Society (LSS), which delivers legal aid in B.C., collaborates at six Family Justice Centres and two Justice Access Centres to deliver family advice services, and provides family duty counsel services at courthouses across the province. LSS also delivers legal advice for family matters over the telephone through Family LawLINE, and its family law website is a valuable tool for self-help information. By providing a continuum of legal information and advice services to people as early as possible, government can shift the approach to family justice from an adversarial approach to a problem resolution approach.

Commitment: Government intends to support LSS to expand the family legal aid services it currently provides.

Revised child support process

One specific area of family law that government will reform is the child support process when some family members live outside of British Columbia. Resolving child support issues for inter-jurisdictional cases is more challenging because the process is complex and time-consuming for parents, and results are uncertain. It is also difficult for judges to make decisions because delay means that information may be outdated by the time the case reaches court. A revised system will involve early case management of applications to help parents respond to the needs of their children within prescribed timeframes. It will help family members determine the correct amount of support to be paid and will offer greater flexibility to make changes when family circumstances change. These reforms will be beneficial to citizens because child support cases will be resolved more quickly. Case management will also enable more agreements outside of court, which will increase the capacity in the court system.

Commitment: In 2014, government will implement a revised child support process for inter-jurisdictional cases. The result will provide a model which could be expanded to other types of child support services.

Adult Guardianship

Another area of family law that requires reform is adult guardianship. Adults who face mental incapacity, including syndromes associated with aging such as dementia, and who have not planned for possible incapacity, need a safety net that includes

modern and effective laws governing adult guardianship. Our guardianship laws should reflect the fundamental principles of autonomy, dignity, and the least restrictive and least intrusive intervention. The current legislation, the ***Patients Property Act***, does not reflect these modern adult guardianship principles. For example, it does not allow planning to be tailored to meet the needs of individual situations or to be easily changed when people's circumstances change.

The ***Adult Guardianship and Planning Statutes Amendment Act***, which has already been passed, strengthens procedural fairness and allows guardianship to be flexible and directed at addressing individual circumstances. The amendments also make sure that the duties of guardians are clearly established, including a duty to foster independence and encourage the adult's involvement in decision-making.

Commitment: Using a phased-in approach, government will bring into force provisions of the *Adult Guardianship and Planning Statutes Amendment Act:*

- **Phase 1**: Some provisions of the ***Act*** came into force on Sept. 1, 2011. These modernized the law relating to the suite of incapacity planning tools, such as enduring powers of attorney, representation agreements, and advance directives.
- **Phase 2**: Provisions of the ***Act*** related to enhancing the rights of adults undergoing the certificate of incapability process will come into force by July 1, 2014. This phase will address 11 of the recommendations made by the Ombudsperson.
- **Phase 3**: Provisions of the ***Act*** relating to court guardianship will come into force following phase 2, once the necessary resource implications are determined and resources are available.

C. Timely and balanced justice: delivering citizen-focused services

A system focused on users rather than managers

Citizens use the justice system in a variety of different ways. They may need assistance in resolving issues associated with a family breakdown, a dispute with a neighbour, or a work-related accident. They may be a witness in a case, a victim of crime, or a victim's family member. They may be someone who is accused of a relatively minor offence or of serious charges, or be a convicted offender. Justice services must be designed to meet the needs of the people who use the system, as opposed to those who manage it. To do this, different services must be matched carefully with different types of problems. They must be available when and where people need them, and they must be delivered using innovative solutions and technology.

Action item 2: transform dispute resolution

Currently, with many disputes, the resolution method is not transparent, timely, or balanced. Citizens with less serious civil and administrative disputes are often faced with processes that are complex, lengthy, and unaffordable. Attending court or an administrative tribunal typically requires citizens to take a day off work, and often they do not have access to the tools they need to prepare. In order to transform civil and administrative dispute resolution in B.C., government will support the shift of disputes from the court system to simplified, user-friendly, administrative processes that will focus on providing early resolution services, including online services. Government will also invest in creating efficiencies in the administrative justice system by investing in user-focused early resolution processes and technology supports.

Civil Resolution Tribunal

Government passed legislation in May 2012 to allow the establishment of the Civil Resolution Tribunal and is now working to implement this alternative to court for people seeking to resolve small claims and most strata property disputes. The tribunal will encourage people to use a broad range of dispute resolution tools to resolve their disputes as early and efficiently as possible, while still preserving formal adjudication as a valued last resort. Canada's first 'online' tribunal, the Civil Resolution Tribunal, will meet citizen needs by making the majority of dispute resolution services available online or by email, telephone, and video. In-person meetings and hearings will also be possible, but will be used only when necessary. These services represent an attempt to modernize the justice system through a focus on meeting citizen needs, user satisfaction, and continuous improvement through innovation.

Commitment: In 2013, government will appoint a Civil Resolution Tribunal chair and will invest in new technology to launch this service.

Road Safety Systems

The Road Safety Systems (RSS) initiative and related changes made in May 2012 to the ***Motor Vehicle Act*** support a new approach to traffic tickets, roadside collision, police reporting, and dispute resolution. Changes to the legislation provide for the establishment of an administrative tribunal, which will shift most traffic disputes out of traffic court. The tribunal will be part of an overall dispute resolution process that encourages early resolution, but makes sure people have an opportunity to be heard by an independent decision maker.

What this means for citizens is that drivers who challenge a driving offence will no longer face the cost and inconvenience of attending court. Instead, the

majority of traffic disputes will be resolved though an administrative justice model that will allow resolution to be completed by phone. Self-service options will provide citizens with access to online information about the resolution process, information about their specific case, and online payment options. People will see a reduction in the time it takes to dispute issues, and if a driver faces a licence suspension, a faster dispute resolution process means that dangerous drivers will be removed from the road more quickly. Shifting the majority of traffic disputes out of the court system to an administrative justice model will allow more timely and effective access to justice.

In addition to freeing up court time, the RSS initiative will result in more efficient use of police resources. Electronic ticketing at the roadside will free up police to focus on enforcement activities by eliminating the need to appear in traffic court for disputes of minor driving offences. As well, electronic processes will speed the roadside processing time for police and will allow them to obtain driver history information at the roadside, which means they will be able to more quickly remove drivers who pose a threat to other citizens. These processes will ensure more effective and timely intervention with high risk drivers and will also create business intelligence that will inform road safety policies and the deployment of police resources.

Commitment: Over the coming years, government will work to design and implement the Road Safety Systems initiative to shift traffic disputes out of court, improve police efficiency, and make the process more accessible for citizens.

Tribunal transformation

Historically, administrative tribunals have provided a less expensive, more specialized alternative to court, and the tribunal system in B.C. currently provides accessible dispute resolution services. However, government will make sure the administrative justice system operates as efficiently as possible, avoids adversarial court-like approaches to dispute resolution, and is supported by technology that enhances user access. Currently, most tribunals operate in isolation from each other. This makes it difficult to identify sector-wide trends, creates challenges for the implementation of system changes, and means that personnel and technology services are often duplicated.

Commitment: Government will enable tribunals to reduce costs, complexity, and delay for tribunal users by investing in user-focused dispute resolution processes and technology supports.

Efficiencies will be achieved through shared resources, such as staff, office space, and technology. By concentrating resources and subject-matter expertise, tribunals can free up resources to invest in sustaining or improving service. We will apply lessons learned in other jurisdictions as we explore these opportunities for improvements to the tribunal system.

This does not mean that a uniform set of processes and technology will apply to all tribunals. There are often legal and practical reasons for a tribunal to take a different approach to resolution of a dispute based on the nature of the tribunal's mandate, the impact of its decisions, the background of its stakeholders, and the type of tribunal. However, there will be fewer variations between tribunals that are clustered around similar mandates and common sets of stakeholders. Common performance measures, such as time from the filing to disposition and user satisfaction ratings, will inform tribunal users and administrators. This strategy will support change across the entire sector, rather than one tribunal at a time. Through an increased emphasis on dispute prevention, early dispute resolution, and online dispute resolution services, this initiative will result in better service and increased access for users.

Commitment: Government will work with justice system participants to explore opportunities to align the province's tribunals into clusters based on similar mandates and stakeholders.

D. Timely and balanced justice: ensuring smart choices at the start

Early intervention leads to better outcomes

If advice, intervention, and case management are not available to people, they often proceed down a lengthy and costly adjudicative process, when there may be a better way to reach a resolution. This has an impact on the timeliness of the entire system, and means that those cases that do require formal adjudication may be delayed by those which could be better resolved outside of court. In order to make sure that the most appropriate and direct path to resolution is taken from the very beginning, government will expand the use of evidence-based approaches in problem solving and improve information sharing, services, and case management. One key change needed to make this work is to encourage justice system participants to share information, commit to streaming cases to early resolution options, and use the courts only when necessary. In particular, organizational self-interest must be set aside in favour of a clear focus on fair and timely results for citizens.

Action item 3: improve early criminal processes

The high number of unresolved criminal cases within the court system is related to increasing complexity of cases. This, in turn, increases the overall length of time required to resolve a case. New tools and alternate processes are needed to resolve criminal cases outside of the court system when possible, and to more efficiently process those that proceed through the court system. In criminal matters, better outcomes and earlier resolution depend on a clear understanding of the needs of and risks posed by the accused, including the risk of reoffending and factors that contribute to criminal behaviour. When this knowledge is properly analyzed and applied, it will lead to the matching of services to the individual. This will maintain public safety and uphold the rule of law while also benefiting the offender and reducing the risk of further criminal behaviour.

Improvements to the charge assessment process

In British Columbia, police investigate crimes and prepare a Report to Crown Counsel recommending criminal charges. Crown counsel are responsible for determining whether or not to charge someone with an offence. When making this decision, the charge assessment standard requires Crown counsel to apply a two-part test. The first part is the determination of whether there is a substantial likelihood of conviction, an evidentiary test to assess whether there is a strong case to present in court. The second part is a determination of whether a prosecution is in the public interest by considering the particular circumstances of each case and offender, as well as the concerns of the local community.

Effective charge assessment relies on communication and a constructive working relationship between police and Crown counsel at an early stage. This will make sure reports to Crown counsel are properly completed and the necessary information is provided. Improving communication between police and Crown counsel will ensure efficient case management from the beginning and improve the timeliness of cases.

Commitment: A number of initiatives will proceed to identify and implement improvements that can be made in communications between police and Crown counsel.

These include:

- an improved disclosure agreement;
- training materials; and

- new processes that will support the development of a closer working relationship between police and Crown counsel.

Enhancing system-wide knowledge of risk assessment

Research shows that the best way to reduce re-offending is to assess the risk to re-offend and, subsequently, to make sure the right intervention is matched to the right person at the right time. As risk increases, the level, intensity, and type of intervention needs to be adjusted. Referring low-risk individuals to treatment programs with the intention of preventing escalating criminal behaviour or over-supervising low-risk offenders can actually increase their risk of reoffending. It is, therefore, important for public safety and fiscal responsibility that interventions are carefully matched to risk. In addition, when interventions are applied, they must be directly linked to risk factors that actually relate to criminal behaviour. To provide offenders with the best possible opportunity for success, interventions must be tailored to their individual learning style, abilities, and strengths.

Risk assessment is currently used in some parts of the justice system, but not all. By creating a better understanding of risk assessment, the likelihood that offenders will receive dispositions that address their risk factors and needs will increase, which will ultimately reduce reoffending. It will also lead to better communication among justice system participants and ensure a consistent approach to the management of offenders across the system.

Commitment: Government will act to share evidence-based information about risk assessment practices with police, Crown counsel, defence counsel, the judiciary, and other key justice system participants.

Criminal legal aid reform

When people are accused of a crime, it is important that they have access to timely legal advice to understand the nature of charges against them and the options they have to respond to the prosecution.

When people receive advice early in their case, they have the support they need to resolve their case more quickly, usually without going through a lengthy court process. An expanded duty counsel model assigns one lawyer to the same court location on a continuing basis. For a limited period of time, this duty counsel retains conduct of non-complex files and those that can be resolved in that time period. During that time, the duty counsel takes instructions, obtains disclosure, and attempts to resolve matters. A non-lawyer service provider may also support the duty counsel to assemble background information and assist the accused in accessing services that may help address underlying, non-legal problems such as housing or health issues.

Expanded criminal duty counsel has the potential to generate justice system efficiencies and savings through earlier resolutions and the reduction of administrative appearances. Providing the accused with access to continuing legal advice and expanded representation at the front-end will facilitate informed and early decisions. This means cases that can be resolved quickly, will be, thus freeing up court time for cases that are more complex.

Commitment: Government intends to support the Legal Services Society to test expanded criminal duty counsel.

Restorative justice

Restorative justice is an option for addressing criminal prosecutions by repairing the harm caused to victims of crime. It is typically achieved through a process that addresses victims' needs and holds offenders accountable for their actions. Restorative justice can provide opportunities for victim participation, community involvement and can hold offenders accountable in a meaningful way. Government supports the delivery of community-based restorative justice approaches to crime through Community Accountability Programs. These programs involve funding to communities for training-related activities, volunteer outreach and coordination, and support for ongoing operations. There are currently about 50

programs in operation across the province taking on low-risk cases, which are referred by local police departments, schools, First Nations Bands, and Crown counsel.

Commitment: Government will continue to expand and support existing Community Accountability Programs, including a training initiative that is currently underway.

In addition, the Inter-ministry Committee on Restorative Justice was established to articulate a coordinated and connected vision for restorative justice within government and to advance a strategy for promoting best practices. It includes representation from the ministries of Justice, Children and Family Development, and Environment to ensure a cross-sector approach.

Commitment: The Committee is exploring opportunities for restorative justice within existing resources, and government intends to expand the use of restorative justice as additional funding becomes available.

E. Timely and balanced justice: integrated approaches to protect citizens

Improved community safety through collaboration and coordination

Public safety is a key component of our justice system. The cost and complexity of policing is increasing for various reasons such as advances in technology, new types of criminal behaviour, and globalization of crime. Government has a responsibility to set the strategic direction for policing in order to ensure that policing is able to respond to these challenges. To do so, government will continue to actively engage with communities on strategic reform that will make sure policing is adequate, effective, sustainable, and representative of community values. It is critical that policing and community safety initiatives are implemented in a way that is proportionate to the needs and vulnerability of specific groups of individuals.

Government must also ensure the protection and support of society's most vulnerable citizens, including marginalized women and victims of domestic violence. Government has an obligation to make sure that all citizens, regardless of their background or circumstances, are treated equitably and fairly by the justice system, and to make sure that services are equally available to everyone. Justice system participants should have knowledge of cultural sensitivities and the circumstances of vulnerable people, and justice policies and practices should reflect this knowledge.

Action item 4: undertake public safety reform

In early 2012, government initiated community consultations and stakeholder engagement in order to develop a strategic policing and safety plan that meets and responds to communities' and citizens' needs. A key topic of discussion during the consultations was the desire to see the provincial government provide stronger leadership, better coordination of services, and alignment with key public safety priorities. In addition to stakeholder input, the B.C. Policing and Community Safety Plan (the Plan) was informed by recommendations made in the Report of the Missing Women Commission of Inquiry (the MWCI Report). The Plan is being released for consultation at the same time as this White Paper. It contains 16 action items with the overall goal of a modern law enforcement framework for British Columbia.

Examine options for models of policing

Development of the Plan involved community consultation and stakeholder engagement, and consultations will continue into the future as the Plan is implemented. As part of the Plan, the provincial government will engage with federal and municipal governments to determine responsibilities and funding options for policing. These two requirements were raised consistently in the consultations across the province.

One of Commissioner Oppal's conclusions in the MWCI Report was that fragmentation of policing and ineffective coordination between police forces and agencies contributed to the failure of missing women investigations. As a result, he recommended the establishment of a regional police force for Greater Vancouver to improve overall capacity and effectiveness, communication, access to information, and accountability.

Commitment: Government will work with key stakeholders, beginning in 2013 and with a target date for completion in March 2015, to commence a comprehensive project that will:

- Define and clarify policing responsibilities at the federal, provincial, and municipal government levels;
- Consider models of service delivery ranging from further integration to the regional delivery of services while retaining local community-focused policing; and,
- Develop options for funding models that reflect each level of government's policing responsibility and distribute costs accordingly.

Crime prevention

Overwhelmingly, during the consultations to develop the Plan, stakeholders pointed out the effectiveness of crime prevention by addressing underlying cyclical, cultural, and generational factors that lead to crime. There was clear interest among stakeholders to see the provincial government demonstrate strong leadership through the development and implementation of a provincially led crime prevention strategy. Measures for effective, evidence-based crime prevention approaches, along with opportunities for communities to share and explore best practices have been identified as important features of such a strategy. There is a need to balance provincial leadership with local coordination to ensure communities have the flexibility to tailor approaches to their own unique needs.

Government will create a committee to explore options for crime prevention programming with the goal of sharing and promoting best practices. Consideration will be given to exploring partnerships with academic institutions and organizations that have the capacity and expertise to carry out this work to ensure a more integrated approach to crime prevention. The committee will also explore opportunities to promote increased awareness and responsibility and provide citizens with simple tools and actions to improve the safety and well-being of their communities.

Commitment: Government will establish an Inter-ministry Committee on Crime Prevention that will develop a Provincial Crime Prevention Strategy by March 2014.

Crime reduction initiative

While crime prevention involves steps to address the root causes of crime before it occurs, crime reduction involves direct action against high-volume criminal behaviour in communities. This includes techniques like crime hotspot analysis and identification of patterns of crime and proactive management of prolific offenders. Recent years have seen the emergence of crime reduction initiatives by various police agencies in British Columbia, but more systematic work and evaluation is needed. The Ministry of Justice will work with the British Columbia Association of Chiefs of Police and municipalities to help set the strategic direction for the initiative, which will include tools for both the public and police on best practices in crime reduction.

Commitment: Government is committed to supporting the implementation of an evidence-based, province-wide Crime Reduction Initiative in consultation with the British Columbia Association of Chiefs of Police and local governments. Work commenced in 2013 and development will continue with implementation targeted for March 2015.

Action item 5: protect marginalized women

A goal for the justice system should be to increase the safety of vulnerable members of society. One aspect is the vulnerability of marginalized women, as highlighted in the MWCI Report. It contains analysis and recommendations related to the police investigation of women reported missing from Vancouver's Downtown Eastside between 1997 and 2002 and the circumstances surrounding the Criminal Justice Branch's 1998 decision to stay charges against Robert Pickton related to a violent assault. The MWCI Report focuses on the justice system's failed response to the missing women, the systemic discrimination inherent in this failure, and the need to improve the response to specific needs of marginalized persons and Aboriginal women in particular. Government is

committed to improving its policies, practices, and services to make sure that those needs are addressed.

The MWCI Report makes reference to the January 2012 national report from the Missing Women Working Group on missing and murdered women in Canada. The national work, led by British Columbia, addressed prevention, intervention, investigation and prosecution issues associated with cases involving serial murders of women.

When the MWCI Report was released, government announced the appointment of the Honourable Steven Point to chair an Advisory Committee on the Safety and Security of Vulnerable Women. Ensuring a thorough and meaningful response to all of the report's recommendations will take time and will be ongoing over the coming months and years. Government, however, has undertaken an initial assessment of the report and is first setting out a process for identifying issues that have already been addressed, those that are able to be addressed in the near future, and those that will require further examination and substantial funding commitments.

Prevention and protection

The women who went missing from the Downtown Eastside were marginalized by a number of factors, including poverty, addictions, and mental illness. Many had moved to Vancouver from remote communities outside of the Lower Mainland and, with few resources at their disposal, became involved in the sex trade. Effective responses to these vulnerable youth and women requires building on existing knowledge about the reasons people become involved in the sex trade, opportunities for prevention, and options to increase safety for those already in the sex trade.

Government has responded to the MWCI Report recommendations regarding additional specialized services for marginalized women and youth by committing $750,000 to the WISH Drop-In Centre Society to allow it to expand its services to vulnerable women who work in the sex trade in Vancouver. Government has also committed to work with key communities to identify options for safer transportation opportunities along the Highway 16 corridor, known as the Highway of Tears, where a number of women have gone missing or been murdered in recent years.

The MWCI Report notes that police need to develop better relationships with marginalized communities, including Aboriginal groups, for the purpose of providing protection, warnings of serial predators, and developing intelligence on suspects who may perpetrate attacks on vulnerable women. These linkages are valuable in establishing whether a woman has gone missing and for how long, vital information in commencing an investigation. Legislative options, such as additional protection orders, may also be useful in providing protection for vulnerable women.

Commitment: Government will work with the Advisory Committee, led by Steven Point, to identify how government can assist communities to implement locally appropriate measures for supporting their vulnerable youth and women. This will include a review of options for community-police linkages, community mobilization and networks, and legislative measures that could provide additional protection for this vulnerable group.

Modernize reporting and tracking of missing persons

The MWCI Report details inadequacies in the police response to citizens who reported missing women, including how the reports were taken, recorded, investigated, and prioritized. It also reports that the public is largely unaware of how to make these reports, including who can report and when. Recommendations for improvement included developing police standards for missing persons reports and investigations and measures to increase the public's involvement in these investigations. As an example, a provincial missing persons website could provide information to the public as well as allow the families of the missing person to obtain current information on the investigation. The RCMP have a missing persons centre and are establishing links with the National Centre for Missing Persons

and Unidentified Human Remains. The centre has a database and website that will address a number of concerns raised in the MWCI Report. The importance of proper investigations of missing persons extends beyond marginalized women to other vulnerable groups. The MWCI Report suggests that British Columbia establish a provincial partnership committee on missing persons to review standards, identify gaps, and put together protocols between agencies.

Commitment: In consultation with key stakeholders, government will consider these recommendations in the context of the ongoing development of policing standards and other reforms in response to the MWCI Report.

Missing persons cases often require rapid action by police in order to avoid serious consequences for the victims. Police need current information, such as financial, cell phone, health, and other records to help track the recent movement of the person. Currently, there are barriers to accessing this information, even in urgent circumstances, if there is no evidence that a crime has been committed. Missing persons legislation could overcome some of these barriers by establishing a process for police to obtain this information. Not only would this assist in finding missing persons, the information available could help police determine whether the case should be escalated to a criminal investigation. Currently four other provinces have enacted missing persons legislation, and in 2012, Provincial and Territorial Justice Ministers endorsed the development of uniform missing persons legislation so that cross-jurisdictional investigations can be facilitated.

Commitment: Government will examine legislation and practices developed in other Canadian jurisdictions to determine whether similar legislation should be enacted in B.C.

Improve criminal investigations of missing persons

The MWCI Report identifies a number of critical failures in the police investigations of the missing women. These included aspects of departmental policies that delayed investigations, poor risk assessment, and variations in missing person policies between police agencies, which created confusion about responsibility for an investigation. The MWCI Report also noted the failure to make the transition from a missing person to criminal investigation and implement the Major Case Management (MCM) model for managing investigations. MCM would have enabled police to track and follow investigative leads, receive and process information effectively, and ensure accountability of the investigative team. Amendments to the ***Police Act*** in 2012 granted authority to the Province to set provincial policing standards in relation to cooperation and coordination among police agencies in complex investigations involving serious crimes.

Commitment: Government will develop standards and best practice protocols for the investigation of missing persons, complex investigations involving serious crimes (including electronic Major Case Management solutions), and cooperation and coordination amongst police agencies.

The MWCI Report also notes that systemic bias was evident in the investigations and police treated the cases of missing marginalized women as a low priority. It recommended that government conduct 'equality in policing' audits under the authority of s. 42 of the ***Police Act*** and create an explicit duty for police to deliver services in a non-discriminatory manner.

Commitment: Government will conduct a study to examine the practices and policies of police agencies in B.C. related to ensuring bias-free policing and will, where required, make sure audits are completed and standards are developed related to bias-free policing and the equitable treatment of all persons.

The MWCI Report recommends training for all police officers that includes mandatory cultural awareness and sensitivity training courses. In collaboration with stakeholders, a review of present training and best practices related to cultural awareness and sensitivity training for police will be completed.

Commitment: Government will ensure the development and delivery of cultural awareness and sensitivity training for police officers in the province, particularly related to the cultural implications of violence against women in a range of settings including family violence, childhood sexual exploitation, and violence against women in the sex trade.

Vulnerable witnesses and victims

The MWCI Report makes recommendations with respect to vulnerable victims and witnesses to facilitate and support their participation in the criminal justice system. These include providing a dedicated victim/family liaison person to provide ongoing information about the case, assist in the relationship between the families and the media, and ensure compassion during the investigation. Vulnerable witnesses require ongoing support, beginning early in the investigation and continuing through the trial.

Commitment: Government is committed to providing supports and examining how these services could be improved.

The MWCI Report also details the failure to provide adequate support for witnesses who are seen as unreliable. This can impede the prosecution of cases that rely on evidence from these witnesses. The MWCI Report noted that progress has been made in research on the memory capabilities of these persons, which could assist prosecutors in obtaining reliable evidence from them. In addition, prosecution policies should also make sure that equality is recognized as a fundamental principle in the prosecution of these cases, and that specific guidance is given on cases involving vulnerable women.

Commitment: Government will review the research on the memory of vulnerable witnesses and incorporate it into training materials for justice system participants, including prosecutors. Prosecution policies, including those that guide the exercise of prosecutorial discretion, will be reviewed to ensure that equality is recognized as a fundamental principle.

Action item 6: respond to domestic violence

Domestic Violence Action Plan

Domestic violence is a serious issue that has devastating impacts for families and communities, and lifelong damaging effects on the children involved. In March 2012, the Representative for Children and Youth (RCY) released an investigative report into the deaths of three children and their exposure to domestic violence. As an immediate response to this report, government established a new Provincial Office of Domestic Violence (PODV), which is responsible for making sure all provincial policies, programs, and services related to domestic violence are delivered in an integrated manner. It is also responsible for monitoring, evaluating, and reporting on the responsiveness and effectiveness of these initiatives.

In October 2012, the PODV released a response to the RCY report findings and recommendations, which made commitments for action. These included introducing an enhanced flagging system for Crown counsel to improve identification of files involving child victims, reviewing the processes for after-hours bail decisions conducted by teleconference (telebail) in domestic violence cases, training of justice system staff, and reviewing domestic violence community coordination initiatives.

Commitment: By June 2013, the Provincial Office of Domestic Violence will deliver a multi-year action plan that will identify a comprehensive approach to addressing domestic violence across government.

Domestic violence units

Domestic violence units bring together police, victim services, and child protection workers in one location to provide an integrated approach to domestic violence cases. These units conduct investigations,

formal risk assessments, safety planning, and victim-specific support for high-risk cases. There are currently four Domestic Violence Units operating in Vancouver, New Westminster, Abbotsford, and the Capital Region. These units are a proven option for enhancing the criminal justice system response to domestic violence.

Commitment: Government intends to work with communities to expand the number of Domestic Violence Units in the province.

Domestic violence courts

Several reports in recent years, including the RCY report, have recommended the establishment of specialized domestic violence courts. These courts are intended to bring together specialized professionals in order to provide an integrated response to domestic violence cases from various sectors, including police, Crown counsel, victim services, child protection, corrections, and community organizations. They are also intended to provide targeted interventions to better support victims and increase offender accountability.

Commitment: Government is committed to working with the judiciary and other justice system participants to explore the establishment of a framework for domestic violence courts. Such a framework would establish a set of common goals for any specialized court initiatives that take into consideration best practices and outcomes from jurisdictions that have implemented such courts.

F. Timely and balanced justice: implementing programs based on what works

Reform based on evidence not anecdotes

In the past, many projects have been initiated, continued, and even expanded based on anecdotal information from people who use, work in, and manage the system. This standard is not high enough. New initiatives must be undertaken based on evidence of the nature of problem and the need for a specific type of intervention. They must also be evaluated based on clear and commonly agreed upon objectives. When initiatives show demonstrated success, the results must also be shared and applied consistently across the system.

Action item 7: require the use of evidence-based approaches

A balanced justice system, where resources are applied proportionate to the risks presented, must be one in which reforms are measurable, sustainable, and grounded in rigorous analysis of system data. Reforms must be evidence-based. To achieve this, significant change is required in the way reforms are developed and measured within the system. Change is also necessary in the system's culture, with respect to the acceptance of measurement as a necessary aspect of reform activity and as an important tool in dismantling a culture of delay.

Measurement is an essential part of reform

The justice system contains many processes. The importance of the system has meant that in the past, when problems with these processes were identified, solutions were often quickly applied. However, too often solutions have been implemented with a sense of urgency before problems have been appropriately measured and before the expected impacts of the solutions have been clearly specified. Past solutions in justice have often been implemented through reliance on anecdotal analysis without rigorous data analysis. The consequences of this approach are that system problems have been only loosely identified, and the impacts of prospective solutions have in turn been poorly tracked. In view of the scale of investment in the justice system, this approach must change.

Commitment: The impacts of justice reforms must be clearly demonstrated when compared to original baseline measures. Through the adoption of contemporary performance measurement and project management practices, new justice reform projects undertaken will have three important common characteristics:

1. **Clear problem definition:** Problems requiring innovation and reform will be clearly specified at the outset of any reform activity. Where the problem is associated with correcting a pattern or a trend, the problem will be stated in clear empirical terms.
1. **Clear definition of success:** Similarly, the intended outcomes of reform projects will be stated clearly before the project is started. It must be clear to observers at the outset what project success will look like from an objective standpoint.
1. **Clear method of measurement:** The method of measuring reform outcomes and reporting on progress of any given project will be plainly stated and communicated frequently and publicly.

Monitor and evaluate

In scientific research, the measures of a successful experiment must be free from bias and have the ability to be verified objectively. This means that

it must be possible to prove whether or not the experiment ***worked***. Similarly, when government invests in program reform on behalf of citizens, it is vital that we are able to demonstrate objectively whether intended results were achieved.

Reform projects require clear objectives that are understood and agreed upon by project participants and remain consistent throughout the life of the project. Knowing whether or not any particular project worked – ***evaluation*** – requires sound methodology that has the ability to demonstrate quantifiable change. Citizens must be confident that public resources are being invested in initiatives that improve the system, and that projects or processes are adjusted or discontinued when they are not working. Expected outcomes, monitoring, and evaluation plans will be made clear, and communicated internally and to the public in plain language, at the outset of projects.

Commitment: Government will establish and implement sustainable evaluation standards, applicable to all justice reform projects.

Applying rigour to reform

Two areas of immediate concern to the timeliness of the system are the increased volume of administration of justice offences, and the significant time and resource costs associated with large criminal cases. Ongoing work on the outcomes of the Downtown Community Court is also relevant to timeliness, as well as to efficiency and service delivery concerns. All three issues are ideal for the application of enhanced rigour and measurement.

Administration of justice offences are used to help manage offenders and accused in the community, and may be laid when an offender or accused violates terms set out in a court order. They include such offences as failure to appear in court, breach of a probation order, or being unlawfully at large. As a percentage of overall court cases, the category of administration of justice offences has increased over the past 10 years. The reasons for this are not well understood, and the ways in which different organizations and agencies, such as police, prosecution, and corrections, pursue these charges have not been explored thoroughly. The resource implications of the growth in this category of offence – their impact on court volumes – may be very significant.

Large criminal cases present a similar area of resource concern combined with unclear data and complex multi-agency involvement. Large criminal cases create disproportionate financial, personnel, and procedural pressures on the justice system. While there is a general belief that problems and inefficiencies are related to case management and the pre-trial process, the causes of inefficiencies and significant cost drivers have not been identified empirically to date. Large criminal cases require significant resource commitments from all areas of the system, and the actions or inactions of one area have significant impacts on other areas. It is therefore imperative that a systemic and integrated approach be taken to identify and address problems associated with large criminal cases.

Commitment: Given the complexity of both these areas of concern, government will undertake specific reform projects with respect to: (a) understanding the growth in administration of justice offences; and (b) cost and resource containment in large criminal cases. In these, as in other reform projects, the measurement characteristics identified above will be clearly exhibited.

Vancouver's Downtown Community Court (DCC) was implemented in 2008 to test an integrated delivery model for justice, health, and social services to deal with offenders more quickly and efficiently. The outcomes from this pilot will inform other communities in the response to offenders with multiple needs. The DCC continues to be a priority for government, and its final evaluation, which includes a report on offender outcomes and recidivism rates, will be released in fall 2013.

Commitment: In consultation with the judiciary, government will take into consideration results of this evaluation as well as evidence from other specialized court models to develop

an evidence-based, integrated, and strategic approach for specialized court initiatives in the province.

Implementing "what works"

Well established justice practices from other jurisdictions are often supported by extensive validation and cumulative research. Through an annual research plan, linkages between justice system priorities and solidly researched approaches from other jurisdictions will be used to promote reform activity in British Columbia. Where established research demonstrates the success of a program or process, we will make sure this knowledge is applied where it may be beneficial.

An opportunity to apply the "what works" approach exists with respect to research on recidivism, the risk of repeat offending. Research has long established that offenders vary in the risk to re-offend. BC Corrections, like many other correctional organizations, uses assessment tools to determine whether an offender is at high or low risk of reoffending. This helps determine the most appropriate intervention for that individual and enhances public safety.

This same knowledge of offender history, circumstances, and likelihood to re-offend may well be applicable more broadly across the justice system. It may, for example, be useful during the pre-trial process to inform the bail and sentencing positions of Crown counsel and defence counsel. Research studies in the United States have shown benefits to the accused, the justice system, and to public safety when pre-trial risk assessments for bail decisions are completed.

Commitment: Government will conduct a feasibility study regarding the application of a pre-trial risk assessment tool in British Columbia and provide recommendations for implementation.

G. Conclusion

Part Two of the White Paper on Justice Reform lays out seven action items to be implemented by government.

Immediate steps, long-term goals and key milestones

For the initiatives noted in this document, government has set out the following milestones:

By March 31, 2014

- Open a new Justice Access Centre in Victoria
- Implement a revised child support process for inter-jurisdictional cases
- Appoint the Civil Resolution Tribunal chair and invest in new technology to launch the tribunal
- Proceed to identify and implement improvements in communications between police and Crown counsel
- Share evidence-based information about risk assessment practices with police, Crown counsel, defence counsel, the judiciary, and other key justice system participants
- Support existing Community Accountability Programs, including a training initiative that is currently underway
- Establish an Inter-ministry Committee on Crime Prevention and develop a Provincial Crime Prevention Strategy
- Act on a number of priority recommendations from the Missing Women Commission of Inquiry based on advice received from the Advisory Committee on the Safety and Security of Vulnerable Women
- Determine whether missing persons legislation should be enacted in B.C.
- Review the current police training curriculum to ensure it incorporates the key values inherent in culturally sensitive policing
- Review policy that guides prosecutorial discretion on charge assessment to ensure equality is recognized as a fundamental principle
- Deliver a multi-year action plan on domestic violence
- Connect with the judiciary and other justice system participants to explore a framework for domestic violence courts that ensures a coordinated, sustainable, and evidence-based approach
- Establish and implement sustainable evaluation standards, applicable to all justice reform projects
- Initiate reform projects to understand the growth in administration of justice offences and the cost and resource containment of large criminal cases
- Initiate a study to determine the feasibility of a pre-trial risk assessment tool for criminal cases

By March 31, 2015

- Bring into force provisions of the ***Adult Guardianship and Planning Statutes Amendment Act*** related to enhancing the rights of adults undergoing the certificate of incapability process
- Design and develop the Road Safety Systems initiative
- Work with stakeholders to define and clarify policing responsibilities and develop options for funding models at the federal, provincial, and municipal government levels
- Engage in a process with stakeholders to consider models for police service delivery ranging from further integration to the

regional delivery of services while retaining local community-focused policing

- Develop options for funding models that reflect each level of government's policing responsibility and distribute costs accordingly
- Support the development of a province-wide Crime Reduction Initiative in consultation with the British Columbia Association of Chiefs of Police and local governments
- Conduct a study to examine practices and policies of police agencies related to bias-free policing and determine where audits are needed to ensure the equitable treatment of all persons
- Complete the development of policing standards governing the investigation of missing persons, Major Case Management, and inter-agency cooperation and coordination
- Connect with the judiciary and other justice system participants to consider an evidence-based, integrated, and strategic approach for specialized court initiatives in the province

2015 and beyond

- Expand mandatory early assessment in family disputes to other court locations
- Use technology to provide Justice Access Centre services to rural and remote communities
- Comprehensively evaluate the physical and virtual Justice Access Centres to determine the best model for service delivery for different communities
- Support the Legal Services Society to expand family legal aid services
- Bring into force provisions of the ***Adult Guardianship and Planning Statutes Amendment Act*** related to court guardianship
- Fully implement the Civil Resolution Tribunal
- Fully implement the Road Safety Systems
- Explore opportunities to align the province's administrative tribunals into clusters, and build a common case management system for tribunals
- Support the Legal Services Society to test expanded criminal duty counsel
- Expand the use of restorative justice
- Ensure that appropriate audits are completed and provincial standards developed related to bias-free policing and the equitable treatment of all persons
- Oversee the development of a suite of cultural awareness and sensitivity training courses for all police officers in British Columbia
- Work with the British Columbia Association of Chiefs of Police to examine options to identify a single Major Case Management solution
- Work with communities to expand the number of Domestic Violence Units in the province

Looking ahead: ongoing engagement and reform

Government will continue work to implement the medium and long-term commitments made in ***White Paper, Part One*** and begin work immediately to implement commitments that have been made in ***Part Two.*** We will continue to engage with participants from across the justice system to ensure coordinated and collaborative efforts are made to implement justice reform. The first step in this

engagement is the inaugural Justice Summit, which will be held in spring 2013. A group of justice system leaders is currently planning the Summit, which will facilitate a constructive dialogue and build a foundation for future Justice Summits.

As we move forward in the months and years to come, government will continue to inform the public on the progress we have made to achieve our goals of a more transparent, timely, and balanced justice system. This will most notably be done through an annual Justice and Public Safety Plan, the first of which is anticipated to be delivered in fall 2013.

Providing feedback on the White Paper on Justice Reform

Comments on the White Paper are encouraged by April 15, 2013, and may be emailed to ***JusticeReform@gov.bc.ca***

Written communication may be sent to:

Ministry of Justice
Province of British Columbia
1001 Douglas Street
Victoria, BC V8W 3V3
Attention: Justice Reform

Appendix 1: Progress on White Paper, Part One commitments

White Paper, Part One included ten action items. We are pleased to update that we will meet all of the specific commitments that were intended to be complete by March 31, 2013 and that we have made significant progress to achieve commitments made under each of the ten action items.

White Paper, Part One Action Items	Status Update
Action Item 1: Justice and Public Safety Council	This spring, government intends to introduce legislation to formally establish the Justice and Public Safety Council to support open, transparent, and accountable leadership for the province's justice system.
Action Item 2: An Annual Justice and Public Safety Plan	The proposed legislation will require the Council to develop an annual Justice and Public Safety Plan to set strategic direction and vision for the system. The first Plan is expected to be prepared and released in fall 2013.
Action Item 3: A Regular Justice Summit	The proposed legislation will require that a Justice Summit will be held at least once a year to encourage innovation and facilitate collaboration across the justice sector. The first Summit will be held in March 2013.
Action Item 4: Greater Transparency and Administrative Tools	The proposed legislation will require the Justice and Public Safety Council to gather and share information to allow for clear performance measures to help assess progress towards proposed goals and to publicly report results each year.
Action Item 5: Transformation of Justice Information Systems	Government is developing a strategic transformation plan on information technology to be delivered by March 2014.
Action Item 6: A Justice Business Intelligence System	Government has developed and is testing data analytical capacity regarding the charge approval process in criminal cases in order to develop reliable, consistent, and automated metrics in this area.
Action Item 7: Improved Ability to Control System Costs	Government has established an Executive Steering Committee to formalize research and reform of the largest cases proceeding through the justice system.
Action Item 8: Public, Evidence-Based Performance Management	The Justice and Public Safety Plan to be released in fall 2013 will include a specific number of clear performance measures for the justice system.
Action Item 9: Collaborating on Efficient Case Management	Government has established an Executive Steering Committee to formalize research and reform of the largest cases proceeding through the justice system.
Action Item 10: Greater Efficiency in Routine Practices	Over the last six months, the Ministry of Justice has undertaken at least four workshops on the *Lean* process and has scheduled at least six more in order to provide employees with the knowledge and tools necessary to make their work practices more efficient.

Appendix 2: Concordance with recommendations

White Paper, Part Two highlights seven action items that government will take steps to implement. It was informed by input and consultation from within and outside of the justice system. As part of the Justice Reform Initiative, government commissioned three reports between February and August 2012: the Cowper Report[1], the McCuaig Report[2], and the Legal Services Society Report[3]. This White Paper was also informed by the Missing Women Commission of Inquiry, the Report from the Representative for Children and Youth, and the BC Policing and Community Safety Plan consultations. The tables below summarize how government's action items respond to some of the recommendations made through these reports and consultations.

1 A Criminal Justice System for the 21st Century, (2012): ***http://www.ag.gov.bc.ca/public/justice-reform/CowperFinalReport.pdf***

2 British Columbia Charge Assessment Review, (2012): ***http://www.ag.gov.bc.ca/public/justice-reform/CowperFinalReport.pdf*** (Schedule 11)

3 Making Justice Work: Improving Access and Outcomes for British Columbians, (2012): ***http://www.lss.bc.ca/assets/aboutUs/reports/submissions/makingJusticeWork.pdf***

TIMELY AND BALANCED JUSTICE: ENHANCING ACCESS TO JUSTICE THROUGH EARLY ASSISTANCE

Government Action Items	Major External Recommendations	Commitments
Advance Family Justice Reform		
Early assessment, information, and referral	The Family Justice Reform Working Group (2005)[4] Recommendation 6 recommended that people be required to attend a dispute resolution session before they are allowed to take a first contested step in a court process. Recommendation 4 also recommended that a needs assessment service be available to people at early stages of a dispute.	Government intends to expand mandatory assessment to other locations in the province.
	The Family Justice Reform Working Group (2005) Recommendations recommended a hub be established as a front door to the justice system, including information and advice services, needs assessment and screening, and access to mediation services.	Government will open a third Justice Access Centre in Victoria in late 2013. Other Centres are located in Nanaimo and Vancouver. They provide a single point of entry for family and civil justice services, and use a needs assessment process to match clients to resources. They provide information, advice, and mediation services as well as referrals to other service providers. Government also intends to use technology to provide Justice Access Centre services to rural and remote communities.
Family legal aid reform	LSS Report recommended increased family and child protection duty counsel services (p.29), support for mediation services (p.33), and expansion of family telephone advice services (p.35).	Government intends to support LSS to expand the family legal aid services it currently provides.
Revised child support process		In 2014, Government will implement a revised child support process for inter-jurisdictional cases. The result will provide a model which could be expanded to other types of child support services.
Adult Guardianship		Using a phased in approach, Government will bring into force provisions of the *Adult Guardianship and Planning Statutes Amendment Act*.

4 A New Justice System for Families and Children: Report of the Family Justice Reform Working Group to the Justice Review Task Force (2005): ***http://www.bcjusticereview.org/working_groups/family_justice/final_05_05.pdf***

TIMELY AND BALANCED JUSTICE: DELIVERING CITIZEN-FOCUSED SERVICES

Government Action Items	Major External Recommendations	Commitments
Transform Dispute Resolution		
Civil Resolution Tribunal		In 2013, Government will appoint a Civil Resolution Tribunal chair and invest in new technology to launch this service. The tribunal will provide an alternative to court for people seeking to resolve small claims and strata property disputes.
Road Safety Systems		Government will design and implement the Road Safety Systems initiative to shift traffic disputes out of court, improve police efficiency, and make the process more accessible for citizens.
Tribunal transformation		Government will invest in user-focused dispute resolution processes and technology supports to enable tribunals to cut costs, complexity, and delay for tribunal users. Government will also work with justice system participants to explore opportunities to align the province's tribunals into clusters based on similar mandates and stakeholders.

TIMELY AND BALANCED JUSTICE: ENSURING SMART CHOICES AT THE START

Government Action Items	Major External Recommendations	Commitments
Improve Early Criminal Processes		
Improvements to charge assessment processes	Cowper Recommendation 2.4 recommended a new approach to pre-charge resolution be taken that maximizes the opportunity to resolve matters before formal charge approval is complete. Cowper Report Recommendation 2.4 recommended an abbreviated report to Crown counsel form should be considered for appropriate cases by the Police/Prosecution Liaison Committee in consultation with the Legal Services Society and the defence bar.	Government will proceed with a number of initiatives to identify and implement improvements that can be made in communications between police and Crown counsel. These include an improved disclosure agreement, training materials, and new processes that will support the development of a closer working relationship between police and Crown counsel.
Enhancing system-wide knowledge of risk assessment	Cowper Report Recommendation 2.6 recommended that the BC Corrections proposal to educate and inform other justice participants of best practices in the assessment of risk should be implemented.	Government will act to share evidence-based information about risk assessment practices with police, Crown counsel, defence counsel, the judiciary, and other key justice system participants.
Criminal legal aid reform	Cowper Report Recommendation 2.4 recommended that LSS be supported to provide legal services to promote early resolution. LSS Report (p. 25) recommended expanded criminal duty counsel. McCuaig Report Recommendation 10 recommended that LSS examine the feasibility of employing duty counsel on a longer term basis.	Government intends to support the Legal Services Society to test expanded criminal duty counsel.
Restorative justice	Cowper Report Recommendation 2.3 recommended a province-wide plan for diversion, including restorative justice should be developed to include education, quality assurance and control, performance measures, reporting, and evaluation. Cowper Recommendation 2.10.4 recommended expanded funding for restorative justice programs should be made available, and innovative methods of funding should be assessed in cases where the offender would otherwise be subject to a significant criminal penalty.	An Inter-ministry Committee on Restorative Justice was established to articulate a coordinated and connected vision for restorative justice and advance a strategy for promoting best practices. Government will continue to expand and support existing Community Accountability Programs, including a training initiative that is currently underway. Government intends to expand the use of restorative justice as additional funding becomes available.

TIMELY AND BALANCED JUSTICE: INTEGRATED APPROACHES TO CITIZEN SAFETY

Government Action Items	Major External Recommendations	Commitments
Undertake Public Safety Reform		
Examine options for service delivery and funding models for policing	During consultations for the development of the Policing and Community Safety Plan, some stakeholders expressed the need to identify policing responsibilities at the various levels of government, and develop options for funding models. MWCI Report[5] Recommendation 9.1 recommended that the provincial government commit to establishing a Greater Vancouver police force through a consultative process with stakeholders.	Government commits to working with key stakeholders to define and clarify policing responsibilities and to develop options for funding models that reflect each level of government's policing responsibilities. Government will engage in a process with stakeholders to consider models for service delivery ranging from further integration to the regional delivery of services while retaining local community-focused policing.
Crime prevention	Throughout the consultations for the Policing and Community Safety Plan, stakeholders expressed their views about the effectiveness of crime prevention initiatives and the need for Government to take a strong leadership role.	Government will establish an Inter-ministry Committee on Crime Prevention that will develop a Provincial Crime Prevention Strategy by March 2014.
Crime reduction initiative	Cowper Report Recommendation 2.3 recommended a province-wide crime reduction plan be developed under the direction of the BC Association of Chiefs of Police in Collaboration with the Criminal Justice and Public Safety Council.	Government is committed to supporting the development of a province-wide Crime Reduction Initiative in consultation with the BC Association of Chiefs of Police and local governments. Work commenced in 2013 and development will continue with implementation targeted for March 2015.

5 Forsaken: The Report of the Missing Women Commission of Inquiry, (2012): ***http://www.missingwomeninquiry.ca/obtain-report/***

Government Action Items	Major External Recommendations	Commitments
Protect Marginalized Women		
Prevention and Protection	MWCI Report Recommendation 1.1 urged the government to provide funding to existing centres that provide emergency services to women engaged in the sex trade to enable them to remain open for 24 hours.	Government has committed $750,000 to the WISH Drop-In Centre Society to allow it to expand the services it provides to vulnerable women who work in the survival sex trade in the Downtown Eastside.
	MWCI Report Recommendation 6.2 recommended that the Provincial Government fund a community consultation process led by Aboriginal organizations to develop and implement a pilot project designed to ensure the safety of vulnerable Aboriginal youth during the rural-urban transition.	Government will work with the Advisory Committee led by Steven Point to identify how Government can assist communities to implement locally appropriate measures for supporting their vulnerable youth and women. This will include a review of options for community-police linkages, community mobilization and networks, and legislative measures that could provide additional protections for this vulnerable group.
Modernize reporting and tracking of missing persons	MWCI Report Recommendation 7.5 recommended that the Provincial Government establish a provincial partnership committee on missing persons to facilitate the collaboration of key players in the ongoing development of best practice protocols for missing persons cases.	In consultation with key stakeholders, Government will consider recommendations related to missing persons reports in the context of the ongoing development of policing standards and other reforms in response to the MWCI Report.
	MWCI Report Recommendation 8.1 recommended that the Provincial Government enact missing persons legislation.	Government will examine legislation and practices developed in other Canadian jurisdictions to determine whether similar missing persons legislation should be enacted in B.C.
Improve criminal investigations of missing persons	MWCI Report Recommendations 7.1 – 7.4 recommended provincial standards be developed and best practice protocols established for missing persons policies and practices.	Government will develop standards and best practice protocols for the investigation of missing persons, complex investigations involving serious crimes (including electronic Major Case Management solutions), and cooperation and coordination amongst police agencies.
	MWCI Report Recommendation 8.2 -8.4 recommended that the provincial government mandate the use of Major Case Management, that the Director of Police Services develop MCM standards and mandate accountability under the standards and that issues related to MCM be reviewed.	
	MWCI Report Recommendation 4.1 recommended that the Director of Police Services undertake equality audits of police forces in B.C. with a focus on police duty to protect marginalized and Aboriginal women from violence.	Government will conduct a study to examine the practices and policing of police agencies in B.C. related to ensuring bias-free policing and will, where required, ensure audits are completed, and standards developed, related to bias-free policing and the equitable treatment of all persons.
	MWCI Report Recommendation 4.12 recommended that police officers undergo mandatory and ongoing experiential and interactive training concerning vulnerable community members.	Government will ensure the development of and delivery of culture awareness and sensitivity training for police officers in the province.
Vulnerable witnesses and victims	MWCI Report recommendation 4.9 recommended that the Provincial Government develop guidelines to facilitate and support vulnerable and intimidated witnesses by all actors within the criminal justice system.	Government is committed to providing supports for vulnerable witnesses and examining how these services could be improved.

	MWCI Report Recommendation 4.8 recommended that the Provincial Government fund three law reform research projects on aspects of the treatment of vulnerable and intimidated witnesses.	Government will review research related to vulnerable victims and witnesses to facilitate and support their participation in the criminal justice process. This research will be incorporated into training materials for justice participants, including prosecutors.
	MWCI Report Recommendation 4.3 recommended that the Provincial Government amend the B.C. Crown Policy Manual to explicitly include equality as a fundamental principle to guide Crown Counsel in performing their functions.	Prosecution policies, including those that guide the exercise of prosecutorial discretion, will be reviewed to ensure that equality is recognized as a fundamental principle.
	MWCI Report Recommendation 4.4 recommended that the Provincial Government develop and implement a Crown Vulnerable Women Assault Policy to provide guidance on the prosecution of crimes of violence against vulnerable women.	
	MWCI Report Recommendation 4.5 recommended that the provincial government adopt a policy statement in the B.C. Crown Policy Manual requiring that a prosecutor's evaluations of how strong a case is likely to be when presented at trial should be made on the assumption that the tier of fact will act impartially and according to the law.	

Government Action Items	Major External Recommendations	Commitments
Respond to Domestic Violence		
Provincial Office of Domestic Violence	Cowper Report Recommendation 2.10 recommended that the Provincial Office of Domestic Violence, working collaboratively with the Criminal Justice and Public Safety Council, should prepare a plan to reduce domestic violence.	By June 2013, the Provincial Office of Domestic Violence will deliver a multi-year action plan that will identify a comprehensive approach to addressing domestic violence across Government.
Domestic violence units		Government intends to work with communities to expand the number of Domestic Violence Units in the province.
Domestic Violence Courts	RCY Report Honouring Kaitlynne, Max, and Cordon Schoenborn Recommendation 7 recommended establishment of specialized domestic violence courts.	Government is committed to working with the judiciary and other justice system participants to explore the establishment of a framework for domestic violence courts.

TIMELY AND BALANCED JUSTICE: IMPLEMENTING PROGRAMS BASED ON WHAT WORKS

Government Action Items	Major External Recommendations	Commitments
Evidence-Based Approaches		
Empirical Analysis of Problems	Cowper Report Recommendation 2.10.2 recommended an administration of justice offence cross-sectional working group be established to better understand trends, understand best practices, and develop pilot test strategies.	Government will undertake a reform project to understand the growth in administration of justice offences.
Monitor and Evaluate		Government will establish and implement sustainable evaluation standards, applicable to all justice reform projects.
Apply What We Know	Cowper Report Recommendation 2.10.3 recommended new approaches such as that taken by the Victoria Integrated Court should be fully evaluated to determine whether they improve outcomes for offenders with mental illness and addictions, so that they can be considered for broader implementation.	In consultation with the judiciary, Government will take into consideration results of the evaluation of the Downtown Community Court as well as evidence from other specialized court models to develop an evidence-based, integrated, and strategic approach for specialized court initiatives in the province.
	Cowper Report Recommendation 2.6 recommended that the B.C. Corrections proposal to educate and inform other justice participants of best practices in the assessment of risk should be implemented.	Government will conduct a feasibility study regarding the application of a pre-trial risk assessment tool and provide recommendations for implementation.

Appendix III

British Columbia Policing and Community Safety Plan

December 2013

BRITISH COLUMBIA

Ministry of Justice

Contents

Minister's message

The British Columbia Policing and Community Safety Plan *represents a culmination of commitments.*

It fulfills our government's and Premier Christy Clark's overarching commitment to develop a long-term, strategic plan for policing in B.C. It also reflects time and thoughtful input invested by various stakeholders – from professionals and academics in the justice sector and related fields like health and social services, to British Columbians interested in furthering safety on the streets where they live, work and play. I offer my sincere thanks to all who have contributed to this valuable exercise.

Policing is inherently dynamic. Many of the tools that enable today's intelligence-led approaches to investigations, targeted use of police resources, and ability to gather and analyze even traces of evidence have emerged or improved in the last decade. Similarly, changes in how society interacts, communicates, conducts business and uses technology have allowed crime to change and evolve. In developing our *Plan*, we've sought to identify and respond to what is working now, what could work better, and what may need to change in the future to keep advancing public safety. At the same time, we remain mindful that maximizing the effectiveness and relevance of the *Plan* may require further flexibility as it rolls out.

We have a strong foundation to build on: the lowest crime rate in four decades, various tough and leading-edge approaches to specific safety concerns, policing that British Columbians say they have confidence in, a complement of police officers that numbers more than 9,000 strong, and a vast array of school- and community-led groups, agencies and programs focused on making our communities stronger and safer.

Our challenge is to continue to meet diverse policing needs – a challenge made clearer through the engagement process that preceded our development of the *Plan*. That process took us to every region of B.C. Focus groups met to discuss the results of nine regional community and stakeholder roundtables, and consultation extended through a blog and a telephone survey.

Another profound, recent development shaped our *Plan*: Commissioner Wally Oppal's 2012 report *Forsaken: The Report of the Missing Women Commission of Inquiry*. We have come a long way in the past decade, with many important changes and improvements to how police communicate and collaborate across jurisdictional boundaries. Moving forward, we have now begun or completed work on half of the recommendations that Commissioner Oppal directed to the province. As this *Plan* rolls out, continuing the work on the recommendations will remain a top priority for my ministry.

One other source of inspiration and direction for our *Plan* deserves mention here: my mandate letter sets out the priority of making the most of the $1 billion that we invest in public safety and the justice system each year. For policing, this means making every dollar contribute as much as possible to furthering public safety. We can do this by empowering police to collaborate, share intelligence and communicate more effectively across jurisdictional boundaries; by bringing together experts to solve specific types of crime, while maintaining knowledgeable, trusted, local policing; and by strengthening relationships and trust between police and First Nations, and between police and marginalized citizens.

The themes and action items in this *Plan* will move us toward these ends and the safer, stronger communities we want for ourselves and our families.

Honourable Suzanne Anton, QC
Attorney General and Minister of Justice

Executive Summary

Introduction

The *British Columbia Policing and Community Safety Plan* (the *Plan*) meets the Premier's commitment to develop a long-term, strategic plan for policing. The *Plan* presents a framework for decisions and action toward a modernized policing and law enforcement framework for B.C.

This *Plan* is grounded in an understanding of the province's policing history, current policing issues and anticipated, future challenges. It is also influenced by broader trends in policing and government today – such as greater expectations for accountability and cost-effectiveness – and addresses some related issues that are beyond the scope of policing, such as mental health challenges. The *Plan* reflects findings and strategies that emerged during an extensive stakeholder and public engagement process, plus priorities identified through *Forsaken: The Report of the Missing Women Commission of Inquiry* (*MWCI Report*) and government's justice reform initiative.

Although designed to guide reform over the next three, five and 10 years, the *Plan* will be a living document, reviewed every year by the Ministry of Justice and updated as needed.

Organization

The *Plan* is presented in two parts, with two appendices and one online supplement.

Policing in British Columbia Today contains a detailed discussion of B.C.'s existing police structure and funding arrangements, plus an overview of existing oversight and governance mechanisms. Police reform initiatives, current drivers of reform, and details of how the *Plan* developed are discussed. This part gives a sense of the historical context and current realities guiding the evolution of the *Plan*.

British Columbia Policing and Community Safety Plan presents a vision for policing in B.C., organized around five themes with 16 accompanying action items. The *Plan* also provides information on progress to date on these items.

The appendices detail the findings from the community consultation and stakeholder engagement process and include a discussion of key milestones in the history of policing in B.C.

The supplement reports the findings of a public survey conducted toward developing the *Plan*; it is posted at: ***www.pssg.gov.bc.ca/policeservices/publications-index/index.htm***

PART I: Policing in British Columbia Today

Policing in B.C. is provided mainly by the RCMP (which provides federal, provincial and municipal policing), 11 municipal police departments and one First Nations Administered Police Service. Several agencies such as the South Coast British Columbia Transit Authority Police Service provide supplemental policing. As well, a number of integrated police units and structures operate throughout the province.

■ Accountability mechanisms

Accountability mechanisms are systems, authorities or procedures that hold police accountable to citizens or government. Many have emerged or evolved over the past decade. They include civilian oversight bodies such as the Independent Investigations Office and governance mechanisms such as police boards.

■ Reform initiatives underway or recently completed

These include the renewed 2012 policing *Agreements* that provide enhanced accountability of the RCMP to the provincial government; collaboration with the policing community to promote integration and consolidation of services; renewal and the expansion of the functionality of the shared police records management system known as PRIME-BC; the setting of binding provincial policing standards for all B.C. police agencies; significant enhancements to training related to dealing with domestic violence cases; and standardization and restructuring of police training to enhance efficiency, effectiveness and accountability.

■ Current drivers of reform

The *Plan* meets the Premier's commitment to develop a long-term, strategic plan for policing, per the *Families First Agenda for Change*. Other drivers of reform include the Province of British Columbia's overall justice reform initiative, the recommendations of the *Missing Women Commission of Inquiry* and concern at all levels of government about the rising cost and sustainability of policing.

■ Engagement activities

A unique feature of the *Plan* is the community consultation and stakeholder engagement involved in its development. The *Plan* details the five engagement activities undertaken.

PART II – *British Columbia Policing and Community Safety Plan*

The *Plan* will guide the evolution of a modern policing and law enforcement framework for B.C. over the next decade. The *Plan* includes a vision and values for policing, and is organized around five themes and, within them, 16 action items.

■ Vision

Policing in British Columbia will be globally connected and community focused. Innovative, effectively governed and efficiently managed, it will operate seamlessly and collaboratively across a spectrum of law enforcement and security responses to public safety. Policing will be accountable, performance-based and evidence-led, and will work in an integrated manner with justice, social sector and community partners.

■ Values

The provincial government is committed to integrity, fiscal responsibility, accountability, respect and choice. More specifically, eight values underlying the development of the *Plan* are included. They relate to the independence and accountability of police, funding responsibilities, bias-free policing, relationships between police and First Nations, service delivery and governance, the importance of local input and support to any police reform initiatives, and the importance of ensuring reform initiatives are research- and performance-based and have measurable outcomes.

■ Theme #1 – Rational and Equitable: Policing is structured, governed and funded in a rational and equitable manner

ACTION ITEM #1: The Ministry of Justice will work in collaboration and consultation with local governments, other key stakeholders and a committee of external experts to:

a. Define and clarify policing responsibilities at the federal, provincial and municipal government levels;

b. Consider models of service delivery ranging from further integration to the regional delivery of services while retaining local community-focused policing; and,

c. Develop options for funding/financing models that reflect each level of government's policing responsibility and distribute costs accordingly.

ACTION ITEM #2: The Ministry of Justice will develop a public safety model including existing and new categories of law enforcement personnel to provide cost-effective services in support of policing.

ACTION ITEM #3: In consultation with First Nations, police, the Ministry of Aboriginal Relations and Reconciliation, local governments and the federal government, the Ministry of Justice will reform the service delivery framework of the First Nations Policing Program in British Columbia.

■ Theme #2 – Accountable: Police are accountable to civilian authority

ACTION ITEM #4: In support of community-based policing, the Ministry of Justice will ensure that British Columbia communities have meaningful opportunities for significant input into local policing.

ACTION ITEM #5: The Ministry of Justice will review the current police board structure, function and training, and make enhancements and improvements where necessary.

ACTION ITEM #6: The Ministry of Justice will conduct a study to examine the practices and policies of police agencies in British Columbia related to ensuring bias-free policing and will, where required, ensure that audits are completed related to bias-free policing and the equitable treatment of all persons.

ACTION ITEM #7: The Ministry of Justice will continue developing provincial standards for police agencies in the province. Priority will be given to standards consistent with those recommended by Commissioner Oppal in the *MWCI Report* governing the investigation of missing persons, complex investigations involving serious crime and inter-agency co-operation.

■ Theme #3 – Collaborative: Police, governments and communities work collaboratively to meet justice and community safety goals

ACTION ITEM #8: In support of enhancing community safety, the Ministry of Justice will work with stakeholders to develop strategies to:

a. Support crime prevention efforts;

b. Support province-led crime reduction initiatives; and,

c. Support further development of civil/administrative law strategies to enhance community safety.

ACTION ITEM #9: The Ministry of Justice will, in collaboration with the Combined Forces Special Enforcement Unit and the Organized Crime Agency of BC, conduct a review of anti-gang initiatives within the province and elsewhere to:

a. Identify potential further civil/administrative law strategies to complement existing enforcement efforts;

b. Enhance the coordination of anti-gang enforcement and disruption efforts between all police agencies through provincial policing standards; and,

c. Implement a province wide anti-gang prevention campaign aimed at deterring at-risk youth from becoming involved in gangs.

ACTION ITEM #10: The Ministry of Justice will strike a cross-government Working Group to:

a. Review and examine existing cross-jurisdictional models of multi-agency collaboration and inter-sectoral service integration;

b. Review existing legislation and policies to identify gaps and barriers to information sharing among agencies; and,

c. Make recommendations to partners and stakeholders for the creation of policies and/or a framework to address gaps to information sharing and to improve integration and multi-agency collaboration on topics of mutual concern to the social services ministries and agencies.

■ Theme #4 – Protect Vulnerable Persons: Police and the provincial government are committed to protecting vulnerable persons

ACTION ITEM #11: The Ministry of Justice will ensure the development and delivery of cultural awareness and sensitivity training for all police officers in British Columbia, consistent with the recommendations in the *MWCI Report*.

ACTION ITEM #12: The Ministry of Justice will: work with stakeholders to promote best practices and expand successful policing strategies such as integrated police/health initiatives across the province; and conduct a study to examine contact between police officers and persons with a mental illness and/or addictions to develop resource-efficient and effective strategies for these interactions.

ACTION ITEM #13: Consistent with the recommendations in the *MWCI Report*, the Ministry of Justice will evaluate possible missing persons legislation to grant speedy access to personal information of missing persons consistent with privacy laws, and evaluate a statutory provision on the legal duty to warn with a protocol on how it should be interpreted and applied.

■ Theme #5 – Effective: Police have modern tools, information and training to deliver effective policing services

ACTION ITEM #14: Consistent with the recommendations in the *MWCI Report*, the Ministry of Justice will foster intelligence-led policing by supporting the implementation of a regional Real Time Intelligence Centre (RTIC) scalable to the province.

ACTION ITEM #15: The Ministry of Justice will work with key stakeholders and academia to develop a performance management framework and enhance the quality and availability of police data to measure policing in a consistent manner across the province and support better performance management practices.

Action Item #16: The Ministry of Justice will conduct a comprehensive review of the *Police Act* to assess its relevance to support the changing and complex environment of policing in British Columbia.

PART I – Policing in British Columbia Today

Structure and funding

Policing in Canada is a shared responsibility between federal, provincial/territorial and municipal governments. Under the *Constitution Act, 1867*, the federal government has the exclusive authority to enact legislation regarding criminal law and procedure. In addition, the federal government is responsible for providing a federal police force to enforce federal statutes and to protect national security. The *Constitution Act, 1867*, delegates responsibility for the administration of justice, which includes policing, to provincial governments. Each province has legislation that sets out the terms by which police are governed. Provincial governments may delegate responsibility for policing within municipal boundaries to the municipality. Under the British Columbia *Police Act*, municipalities 5,000 population and over are responsible for providing police services within their municipal boundaries. They may do so by either establishing a municipal police department or entering into an agreement to have municipal policing provided by another municipal police department or the provincial police force, which in British Columbia is the Royal Canadian Mounted Police (RCMP).

In British Columbia, policing is provided mainly by the RCMP (which provides federal, provincial and municipal policing), 11 municipal police departments and one First Nations Administered Police Service. There are also several agencies that provide supplemental or "designated" policing in the province; that is, they are mandated to provide policing in geographic areas already served by provincial or municipal police agencies but for a specific purpose. For example, in the Lower Mainland area of the province, the South Coast British Columbia Transit Authority Police Service (SCBCTAPS) is a designated police unit that provides policing on and around the transit system, supplemental to the jurisdictional police. Similarly, the Canadian National and Canadian Pacific railway police forces provide specialized law enforcement within the province. There are also enhanced police services at the Vancouver International Airport and enhanced First Nations police services.

In addition, there are a number of integrated police units and structures operating throughout the province. These provide specialized police services through multi-agency collaboration leveraging the cumulative strength of those agencies though enhanced information-sharing and consolidation of efforts. A variety of funding and governance structures are in place.

In Canada, local levels of government contribute the most funding to policing. In British Columbia, based on 2012 spending, 65 per cent of expenditures were borne by municipal governments; the remainder was split between the provincial and federal governments.[1] Ultimately, property tax payers fund the bulk of policing costs.

RCMP federal force

The RCMP is Canada's national police force. Established under the *RCMP Act*, the RCMP is unique in that it serves as a federal, provincial and municipal police service. The RCMP falls within the portfolio of the Minister of Public Safety Canada and operates under the direction of the RCMP Commissioner. As the federal police force, the RCMP enforces federal statutes across the province and is responsible for border integrity, national security, drugs and organized crime, financial crime and international policing.

In 2012, the authorized strength of the federal force in British Columbia was 1,028, including 140 protective policing positions. The federal government pays 100 per cent of the cost of the federal force.

1 Police Services Division, Policing and Security Branch, Ministry of Justice.

RCMP provincial force

In March 2012, the provincial government renewed its 20-year *Provincial Police Service Agreement* (*PPSA*) with the Government of Canada to contract the RCMP as British Columbia's Provincial Police Force. Under the terms of the *PPSA*, rural or unincorporated areas of British Columbia are policed by the Provincial Police Force, with the provincial government paying 70 per cent of the cost-base described in the agreements, and the federal government paying the remaining 30 per cent in recognition of the benefits gained from the RCMP acting as the Provincial Police Force. These benefits include facilitating the flow of intelligence between all levels of policing, having RCMP members available for redeployment for emergencies or large events, and sharing the costs and use of common police and administration services.

The Provincial Police Force can be broken into two main categories: detachment policing and the provincial force infrastructure. Detachment policing provides local police services to municipalities under 5,000 population and unincorporated (rural) areas throughout the province by means of uniformed patrols, response-to-call duties, investigative services, community-based policing, traffic enforcement, and administrative support to provincial detachments.

A portion of the provincial cost is recovered through the provincial police tax. In 2007, property owners in municipalities under 5,000 population and unincorporated (rural) areas began to pay the provincial police tax which covers a portion (less than 50 per cent) of the general duty and general investigative police services provided by the Provincial Police Force.

The Provincial Police Force infrastructure includes capital-intensive services such as marine and air capabilities, and provincial Operational Communications Centres which provide emergency communication (e.g., 9-1-1, Dispatch) services to all provincial and municipal police units outside of the Lower Mainland. The Provincial Police Force also provides traffic enforcement on all provincial highways; the capacity and expertise to resolve high risk incidents; target organized crime, gang violence, and serial crimes; as well as to provide security and policing services for large scale community events and emergencies. The Provincial Police Force provides services to the entire province including areas policed by municipal police departments and designated police units such as the SCBCTAPS.

In 2012, the Provincial Police Force authorized strength was 2,602, including 769 members providing general duty and general investigative services at provincial detachments.

Municipal policing

Under the *Police Act* a municipality must assume responsibility for its police services when, as recorded by a Canada Census, its population reaches 5,000 persons. These municipalities may form their own municipal police department, contract with an existing municipal police department, or contract with the provincial government for RCMP municipal police services.

In 2012, there were 74 municipalities in British Columbia responsible for providing police services within their municipal boundaries. Twelve municipalities were policed by municipal police departments and 62 were policed by the RCMP.

MUNICIPAL POLICE DEPARTMENTS

Currently, 12 municipalities in the province are policed by 11 municipal police departments. The municipal police departments are the:

- Vancouver Police Department,
- Victoria Police Department (which polices the City of Victoria and the Township of Esquimalt),
- Saanich Police Department,
- Central Saanich Police Service,
- Oak Bay Police Department,
- Delta Police Department,
- Abbotsford Police Department,
- New Westminster Police Department,
- West Vancouver Police Department,
- Nelson Police Department, and
- Port Moody Police Department.

In 2012, the authorized strength of the municipal police departments was 2,413 officers, including adjustments to account for the departments' participation in the Lower Mainland regional integrated teams.

RCMP MUNICIPAL FORCES

The *Municipal Police Service Agreement* (*MPSA*) is signed by the provincial and federal governments. This agreement allows the provincial government to sub-contract the RCMP to municipalities with populations 5,000 and over for police services. To contract RCMP municipal services, a municipality must sign a *Municipal Police Unit Agreement* (*MPUA*) with the provincial government. In 2012, there were 62 municipalities in British Columbia that contracted with the provincial government for RCMP municipal police services.

The terms of the *MPSA* and the *MPUA* require that municipalities between 5,000 and 14,999 population pay 70 per cent of the RCMP cost-base; municipalities 15,000 population and over pay 90 per cent. The remaining 30 per cent and 10 per cent, respectively, are paid by the federal government. Municipalities are responsible for 100 per cent of certain costs, such as accommodation (i.e., the detachment) and support staff.

In addition to standalone detachments serving individual municipalities, the RCMP operates regional and integrated detachments in many areas of the province. An integrated detachment is comprised of two or more provincial and/or municipal police units working out of the same detachment building. In integrated detachments, RCMP members from each policing unit report to one commanding officer and usually provide police services to the combined provincial and municipal policing areas.

The regional detachment structure adds another layer to integration. Regional detachments offer a central point of management, coordination and comptrollership for multiple integrated or stand-alone detachments in the area. These types of arrangements allow for specialized and/or administrative police services to be delivered regionally.

In 2012, the authorized strength of the RCMP municipal forces was 3,463 members, including adjustments to account for the municipalities' participation in the Lower Mainland regional integrated teams.

First Nations policing

The First Nations Policing Program was introduced in June of 1991 by the Government of Canada, giving First Nations communities the opportunity to participate with provincial and federal governments in the development of dedicated policing delivered by the RCMP to serve their communities. The First Nations Policing

Program is intended to provide accountable and effective policing services that are culturally sensitive and responsive to the particular needs of First Nations communities.

FIRST NATIONS COMMUNITY POLICING SERVICES (FNCPS)

On April 1, 2006, a *Framework Agreement* between the federal and provincial governments for RCMP-FNCPS in the Province of British Columbia was signed. In 2012, the FNCPS had an authorized strength of 108.5 RCMP officers who provided dedicated police services to 131 First Nations communities in British Columbia through 53 Agreements (CTAs). Each FNCPS unit is established under a tripartite agreement between the provincial government, the federal government and the participating Band(s). The provincial share of funding the FNCPS is 48 per cent and the federal share is 52 per cent.

The Province of British Columbia and Canada are currently in negotiations to establish a new framework agreement that would support the provision of policing services through the RCMP First Nation Community Police Service. This agreement provides the opportunity for communities to play a role in establishing policing goals, objectives and priorities that reflect the culture and traditions of these communities.

INTEGRATED FIRST NATIONS POLICE UNITS

In 2007, a policing agreement was signed by the Province of British Columbia, the District of West Vancouver, and the Squamish and Tsleil-Waututh First Nations to create an Integrated First Nations policing unit comprised of RCMP and West Vancouver Police Department members. This policing arrangement covers reserve lands located in North Vancouver, West Vancouver and the Squamish Valley.

In this same year, a policing agreement was signed by the Government of Canada, the Province of British Columbia, the Corporation of Delta and the Tsawwassen First Nation to deliver enhanced policing to the Tsawwassen First Nation by the Delta Police Department. The funding of this agreement is shared by the provincial and federal governments, 48 per cent and 52 per cent respectively. There is currently one member providing enhanced policing under this agreement.

FIRST NATIONS ADMINISTERED POLICE SERVICES (FNAPS)

There is one First Nations Administered Police Service (FNAPS) in British Columbia, the Stl'atl'imx Tribal Police Service. This police service is a designated policing unit, with governance provided by a police board whose members are selected from the communities served. Police officers recruited by the police board are either experienced officers or graduates from the Justice Institute of British Columbia Police Academy. All officers are appointed under the *Police Act*. In 2012, the Stl'atl'imx Tribal Police Service had an authorized strength of eight police officers.

Accountability mechanisms

Discussions around police accountability are often interspersed with terms such as 'oversight', 'superintend' and 'governance', as well as 'civilian oversight' or 'civilian governance'. Within the context of this *Plan*, the term 'accountability mechanisms' is the umbrella term for those systems, authorities or procedures that hold the police to account to citizens or government in some way. The issue of how best to achieve effective police accountability is one that has been examined and discussed extensively by British Columbians – in particular, over the past decade – resulting in an evolution of accountability mechanisms and systems in the province.

■ Civilian oversight

The current civilian oversight regime in British Columbia is described below, followed by a discussion of governance mechanisms at the municipal and provincial level.

THE INDEPENDENT INVESTIGATIONS OFFICE

Since September 2012, the Independent Investigations Office (IIO) has conducted investigations into police-related incidents that result in death or serious harm to members of the public. Prior to the IIO's establishment, police forces were calling upon other police forces to conduct such investigations, to ensure that members of a police force would not be investigating members of the same force. The civilian-led IIO's mandate is to conduct investigations with respect to any on or off duty police officer in British Columbia, whether that officer is a municipal officer, a member of the RCMP, member of a designated policing unit, an auxiliary officer or a Special Provincial Constable.

Police agencies are required under the *Police Act* to contact the IIO when an incident occurs that may fall within the IIO's mandate. If the IIO finds the case is within its jurisdiction, it will investigate and determine whether the police officer(s) involved were within their legal authorities. The chief civilian director will then either make a report to Crown counsel indicating that an offence may have occurred, or will determine that an offence did not occur and will release a public report on the investigation and the IIO's findings. The IIO operates under the Ministry of Justice.

THE OFFICE OF THE POLICE COMPLAINT COMMISSIONER

Under the *Police Act*, the Office of the Police Complaint Commissioner (OPCC) is responsible for overseeing the handling of complaints against officers employed by municipal police departments and designated policing units such as the SCBCTAPS and the Stl'atl'imx Tribal Police Service, with respect to professional standards and code of conduct matters.

Members of the public may file complaints directly with the OPCC or directly with a police agency. A complaint may be resolved by informal means, mediation, or through investigation. The police conduct the investigations into public complaints, while the police complaint commissioner oversees those investigations. After the completion of an investigation, disciplinary or corrective measures may be imposed, which can range from the member receiving advice to dismissal. The police complaint commissioner may review the result of the proceeding and, if the result is deemed incorrect, may order a review on the record or a public hearing.

As the police complaint commissioner is an independent officer of the Legislature, the OPCC operates independently of police and government. The OPCC reports directly to the British Columbia Legislative Assembly.

COMMISSION FOR PUBLIC COMPLAINTS AGAINST THE RCMP

The Commission for Public Complaints (CPC) against the RCMP is an independent agency created by Parliament to provide civilian oversight of RCMP members' conduct while on duty. The CPC reports to the Minister of Public Safety Canada. The *RCMP Act* sets out the procedures for complaints against members of the RCMP.

Members of the public may file complaints directly with the CPC. The CPC is mandated to receive complaints about the conduct of RCMP members, conduct reviews when complainants are not satisfied with the RCMP's handling of their complaints, hold hearings or carry out investigations on complaints, and report findings and make recommendations to the Commissioner of the RCMP and the Minister of Public Safety Canada, with the objective of correcting and preventing recurring policing problems.

On June 19, 2013 Bill C-42, the *Enhancing Royal Canadian Mounted Police Accountability Act*, received Royal Assent. This *Act* amends the *RCMP Act* to provide where the actions of a member of the RCMP lead to a serious incident (e.g., death or serious injury) an investigative agency external to the RCMP shall investigate, unless an appropriate investigative agency does not exist.

A further amendment will create a new Civilian Review and Complaints Commission (CRCC) to replace the existing CPC. The CRCC will have the same powers of the former commission, along with enhanced

investigative powers and increased access to information in the possession or under the control of the RCMP, and the ability to summon witnesses, compel the production of documents, and conduct joint investigations with other complaint bodies. The CRCC will be able to assess whether the RCMP is carrying out its activities in accordance with the *RCMP Act* and its policies, procedures and guidelines, and assess the adequacy, appropriateness, sufficiency or clarity of any policy, procedure or guideline related to the operation of the Force.

Members of the RCMP will not be eligible to be appointed as members of the Commission. Other amendments to the *RCMP Act* are intended to modernize the RCMP's discipline, grievance and human resource management framework. These amendments are to come-into-force on a date to be fixed by order of the Governor in Council.

Governance

POLICE BOARDS

In British Columbia, a primary civilian governance mechanism for municipal and designated police forces is the police board. Police boards are currently in place for the 11 municipal police departments, the Stl'atl'imx Tribal Police Service, Organized Crime Agency/Combined Forces Special Enforcement Unit (OCA/CFSEU-BC), and the South Coast British Columbia Transportation Authority Police Service. The authority of a police board derives from the *Police Act*.

Municipal police departments are governed by the municipality's civilian police board. The role of the police board is to provide general direction and to, in consultation with the Chief Constable, set the priorities, goals and objectives of the municipal police department, in accordance with relevant legislation and in response to community needs. Each police board is chaired ex-officio by the municipality's mayor, and consists of one person appointed by the municipal council and up to five people appointed by the provincial government.

Entities applying to establish a designated police unit must include in their application a description of the proposed governance board and membership. Appointments are made by the provincial government, in consultation with the entity.

LOCAL POLICE COMMITTEES, THE PROVINCIAL POLICE SERVICE AGREEMENT AND MUNICIPAL POLICE UNIT AGREEMENTS

Municipalities that receive municipal policing from the RCMP (under *Municipal Police Unit Agreement*) do not have municipal police boards. However, there are other mechanisms for civilian governance. Under s. 31-33 of the *Police Act*, local police committees may be formed to promote positive police-community relationships and to identify issues concerning the adequacy of policing. While these sections of the *Police Act* have not been used to create a formal police committee, other advisory committees and community consultative groups are in place in some communities policed by the RCMP. The primary governance mechanisms for policing services provided by the RCMP are the *Provincial Police Service Agreement*, the *Municipal Police Service Agreement* and individual *Municipal Police Unit Agreements*.

Provincial government

The *Police Act* sets out the specific policing obligations for which the provincial government is responsible. Section 2 of the *Police Act* states that, "The minister must ensure that an adequate and effective level of policing and law enforcement is maintained throughout British Columbia." Section 39 of the *Act* states that the minister must designate a person employed in the ministry as the director of police services. The director acts on behalf of the minister and is subject to the direction of the minister. Section 39 further states that the director is responsible for superintending policing and law enforcement functions in British Columbia.

Currently in British Columbia the director of police services is the Assistant Deputy Minister, Policing and Security Branch (PSB), Ministry of Justice. Section 39 of the *Act* allows the director to employ persons necessary to carry out the business of the director's office. Thus, the Policing and Security Branch carries out the responsibility of the director to superintend policing and law enforcement functions and, ultimately, the minister's obligations under the *Police Act*.

POWERS AND RESPONSIBILITIES OF THE MINISTER

The *Police Act* outlines the powers and responsibilities of the minster. They are broad and varied, in order to allow the minister to meet the obligation of ensuring that an adequate and effective level of policing and law enforcement is maintained. The *Act* sets out the circumstances under which the provincial government must provide policing and law enforcement services, and those under which municipalities must be responsible for their services. Even though a municipality may be responsible for its police services, the *Act* gives the power to the minister to provide or reorganize the policing and law enforcement of a municipality, if the minister considers it necessary or desirable.

If a municipality is not fulfilling its obligation to provide adequate policing, the minister may take steps to ensure that adequate policing occurs, including appointing persons as constables to police the municipality or using the Provincial Police Force. Similarly, if the minister receives notification that a policing or law enforcement unit is not complying with the *Act*, the minister may provide policing or law enforcement in place of the designated unit's officers.

Under the agreement for the RCMP to provide a Provincial Police Force, the minister sets the objectives, priorities, and goals of the Provincial Police Force. Further, the *Police Act* provides that the commissioner of the Provincial Police Force is under the minister's direction to implement these objectives, priorities and goals.

POWERS AND RESPONSIBILITIES OF THE DIRECTOR OF POLICE SERVICES

The director is responsible for superintending policing and law enforcement functions in British Columbia. The *Police Act* outlines these responsibilities and specifies ways in which these responsibilities must be carried out. For example, if the director considers that a municipality is not fulfilling its responsibility to provide adequate policing then the director must direct the municipality to correct the failure to comply with the *Police Act*. Another role and responsibility of the director is to support the minister in meeting his or her obligations and to act in an advisory role. The director is to consult with and provide information and advice to the minister, chief civilian director, chief constables, chief officers, boards and committees, on matters related to policing and law enforcement. The *Act* specifies that the director must, on the request of the minister, study, investigate and prepare reports on matters concerning policing, law enforcement and crime prevention. The director may also do so on the director's own initiative or on request of a council or board.

A significant director's function is that of establishing standards and evaluating compliance with such standards. The director's powers to set standards were enhanced when amendments to the *Police Act* gave the director the power to set binding provincial policing standards for all police agencies in British Columbia. The director may inspect the records, operations and systems of administration of any policing or law enforcement operation. The director's functions include reporting on the inspections and maintaining a system of statistical records required to carry out inspections, evaluations and research studies.

THE ROLE OF THE POLICING AND SECURITY BRANCH

The Policing and Security Branch (PSB) has a wide range of responsibilities related to policing, security and public safety. The Branch has two divisions: Police Services Division and Security Programs Division.

Police Services Division assists the director of police services to superintend policing and law enforcement in British Columbia. Responsibilities include: monitoring provincial and municipal RCMP policing agreements; establishing provincial policing standards and monitoring compliance; administering programs such as the organized crime, guns and gangs portfolio, First Nations policing agreements and enhanced road safety initiatives; providing training and support to police governance boards; developing policing policy and legislation; providing leadership with respect to policing services delivery and technology; managing non-police law enforcement appointments and activity (e.g., special provincial constables); and reporting on provincial crime and police data.

Security Programs Division is responsible for regulating the private security industry and administering programs to protect children and vulnerable adults. These include maintaining records of protection orders, and screening persons who work with children and vulnerable adults in provincially funded or regulated occupations. Security Programs Division is also responsible for regulating metal dealers and recyclers, and the sale of body armour and armoured vehicles.

Reform initiatives underway or recently completed

RCMP policing agreements

As noted, the Province of British Columbia recently renewed the *RCMP Agreements*. A new preamble has been added which lays the foundation for a strong, collaborative, and cooperative relationship between the contract partners (Public Safety Canada, the RCMP, and the provincial government). The preamble describes the partners' commitment to working together to ensure all contract partners are involved in decisions concerning substantive issues affecting the cost, quality, governance and delivery of services provided by the RCMP Provincial Police Force.

Under the 2012 *Agreements*, the Federal/Provincial/Territorial Contract Management Committee (CMC) replaces the Contract Advisory Committee that was responsible under the 1992 *Agreements* for dealing with issues arising from the implementation of those *Agreements*. The change in terminology ("management" instead of "advisory") reflects the strengthened accountability, governance, and reporting provisions as well as the expanded role of the new committee in managing and implementing the *Agreements*.

As British Columbia's Provincial Police Force, the RCMP delivers services according to the strategic direction of the provincial government. The Minister of Justice sets the objectives, priorities and goals of the Provincial Police Force in line with provincial policing priorities. These are based on local needs, the evolving nature of crime and the specific requirements of policing in British Columbia. The Commanding Officer (CO) must ensure that the deployment of personnel and equipment reflects these priorities. Every year, the CO must submit a report to the minister describing the progress towards implementing and achieving the priorities, goals and objectives. (Article 7)

The Province of British Columbia is responsible for setting standards for all police agencies in the province and new provisions in the 2012 *Agreements* require the Commissioner to meet or exceed these standards.[2] This means all police agencies in British Columbia will be subject to the same provincial standards. Further, when the RCMP is considering changing or creating new national standards, they must table the issue with CMC and seek agreement on a way forward. (sub article 6.5)

2 Unless doing so is not possible because it would contradict the law or negatively affect the RCMP's ability to deliver effective and efficient police services or negatively affect public or officer safety.

A significant addition to the 2012 *Agreements* is the provincial government's ability to have in-depth reviews conducted on issues relating to the Provincial Police Force and RCMP national programs. This is an important mechanism for ensuring services and programs are efficient and effective. These provisions strengthen accountability for financial management and facilitate informed decision-making. (Articles 19 and 21.8)

The provincial government can also be involved in the appointment and replacement of Detachment Commanders for all RCMP detachments in British Columbia as well as determining the number and location of detachments in the province. Local communities may also be consulted in the selection process. (Articles 7 and 8)

While the *Agreements* have a 20-year term, reviews will be conducted every five years. The 1992 *Agreements* also contained a provision for five year reviews but the scope has been expanded in the 2012 *Agreements* to include all substantive issues rather than simply cost items, thus ensuring the *Agreements* remain current and meet the evolving needs of the contract partners.[3] (Article 22)

Integration

In collaboration with the policing community, the Province of British Columbia has supported the creation of seamless, integrated, professional police services by promoting the integration and consolidation of services, where appropriate, and providing leadership in the centralization of services that are highly technical, capital intensive and specialized. Over the last decade or more, police leaders and the provincial government have recognized the need for a more integrated, targeted, "evidence-based" approach.

The benefits of targeted policing, integration and consolidation of police services include: reducing duplication and overlap of police services throughout the province, particularly with respect to specialized services; ensuring a more focused, timely and coordinated response to major incidents; allowing agencies to better capitalize on economies of scale; facilitating the use of shared equipment and common technologies; streamlining and reducing overlap of administrative functions; and, ensuring maximum flexibility to investigate crimes that occur across the region.

Currently there are more than 1,100 federal, provincial and municipal officers working together in over 20 integrated teams in British Columbia. The provincial government contributes over $75 million toward integrated teams, municipalities contribute over $35 million and the federal government contributes over $19 million. In British Columbia, there are three broad categories of integrated teams:

- Federal integrated teams are funded primarily by the federal government and include, for example, the Integrated Market Enforcement Team (IMET) and Integrated Border Enforcement Team (IBET);
- Provincial integrated teams are funded primarily by the provincial government and include, for example, the OCA/CFSEU-BC, Integrated Child Exploitation Team (ICE), Hate Crime Task Force (HCT), and Integrated Sexual Predator Observation Team (ISPOT). These teams provide service to all jurisdictions in British Columbia; and,

3 There are other important accountability provisions in the *Agreements*. The CO must inform the minister of any new or outstanding complaints against the Provincial Police Force on a monthly basis. In addition, the CO must consult with the minister on the operational and administrative status, as well as the organizational structure, of the Provincial Police Force at least four times per year (Article 7 and 8). The financial planning and reporting provisions have been enhanced to increase the accountability of the Provincial Police Force and to ensure the provincial government and the RCMP can work together to identify resource requirements, potential risks and efficiencies. Multi-year financial planning, rather than single year planning, is now undertaken. Substantive issues relating to RCMP national programs which are cost-shared by contract partners must be brought before CMC, creating a new level of provincial oversight.

- Regional integrated teams are formed to address concerns or provide services to specific regions of the province. For example, RCMP specialized policing units in the Lower Mainland have been consolidated and now operate under a regional service delivery model. An example is the Integrated Homicide Investigation Team (IHIT) which was created in 2003 to integrate homicide investigations in Lower Mainland municipalities. Other teams include the RCMP Emergency Response Team (ERT), Forensic Identification Services, Police Dog Services and Integrated Collision Analyst Re-constructionists. The costs of these Lower Mainland teams are shared between the participating jurisdictions according to a funding formula.

In addition to integrated teams, Policing and Security Branch supported the integration of RCMP detachments and command structures around the province.[4] Many of these integrated detachments deliver specialized services on a regional basis.

PRIME-BC renewal

In the early 2000s, the provincial government and British Columbia's police agencies partnered to develop a shared police records management and computer-aided dispatch system connecting all municipal police and RCMP detachments. Since that time, PRIME-BC (Police Records Information Management Environment for British Columbia) has evolved into North America's only multi-jurisdictional police information system. Its three interlinking components (Computer Assisted Dispatch, Records Management System, and Mobile Work Stations) create a virtual, real-time connection from police communications centres to mobile units and patrol vehicles. Together, they provide police with instant information on crimes, allowing them to operate in a structured information environment that creates efficiencies and improves analytics.

Now, a decade later, PRIME-BC is poised to move forward and embrace new technologies that extend beyond its original functionality. To support this necessary transformation, and to improve responsiveness and quality of service to police agencies, PRIME-BC will renew its organization and move into the next phase of its evolution. The process of renewal of PRIME-BC has the overall goal of ensuring the organization's efficiency and effectiveness going forward and the continued delivery of fiscally responsible communication and information services to British Columbia's police agencies.

British Columbia Provincial Policing Standards

As noted, one of the director of police services' specific functions is to inspect and report on the quality and standard of policing and law enforcement services delivery.[5] Recently, the director's responsibilities with respect to policing standards were enhanced. Amendments to the *Police Act* were brought into force in January 2012 which established the authority for the director to set binding provincial policing standards for all police agencies in British Columbia. Initially, the scope of this authority included setting standards for police training, the use of force, and places of detention, and equipment and supplies to be used in relation to policing and law enforcement. Recently the scope was broadened to include setting standards related to data collection, cooperation between police agencies and the independent investigations office as well as cooperation and coordination among police agencies on complex investigations.

This new framework establishes a clear authority for the provincial government to set binding provincial policing standards that apply to all police agencies in the province, and can be easily amended to respond to changes in the policing environment.

4 Examples include the integration of detachments in Vernon/North Okanagan (Vernon, Coldstream, Enderby, Armstrong, Spallumcheen, Lumby and Falkland); Boundary (Grand Forks and Midway) and the Upper Fraser Valley (Chilliwack, Agassiz, Boston Bar and Hope).

5 *Police Act*, R.S.B.C. 1996, c.367, s. 40 (1) (a)

An important part of the development of standards for police in British Columbia is the creation of an Advisory Committee on Provincial Policing Standards (ACOPPS) to advise the provincial government on standards-related issues. ACOPPS provides a forum for Police Services Division to formally consult with key police-related and non-police stakeholders concerning the development or amendment of provincial policing standards. Members will provide advice on priorities for standards development, suggest subject matter experts who could assist in drafting standards on specific issues, and provide feedback on draft standards prior to their formal submission to the director of police services and the minister for approval. The work of ACOPPS began in November 2013.

Focus on domestic violence

The Ministry of Justice recognizes the importance of developing enhanced and systematic responses to cases of domestic violence and violence against women in relationships. The ministry worked in partnership with stakeholders on the Province of British Columbia's *Domestic Violence Action Plan* that was launched in January 2010 in response to recommendations from the British Columbia Coroner's inquest[6] into the 2007 deaths of six-year-old Christian Lee and his family members, and the subsequent Representative for Children and Youth's report on the death of Christian Lee.[7] The focus of the *Action Plan* is to enhance and integrate the response to domestic violence by the justice system and child welfare partners to better serve all British Columbians.

The provincial government revised the *Violence Against Women in Relationships* (*VAWIR*) policy in December 2010. *VAWIR* is a single cross-agency domestic violence policy that sets out the role and responsibilities of each service provider including police, Crown counsel, victim services, corrections, and child protection workers. The updated policy also includes a new *Protocol for Highest Risk Cases* that establishes a provincial protocol for coordinating justice and child protection system partners and information sharing in domestic violence cases where there is elevated risk. The revised policy and new protocols provide greater integration, coordination and collaboration among service providers to better meet the needs of families, women and children in British Columbia.

Minimizing the risk of violence, enhancing victim safety and ensuring appropriate offender management are priorities. In 2011, the Ministry of Justice distributed a model operational policing policy on domestic violence and the ministry has encouraged all agencies to ensure their operational policy aligns with the model.

In March 2012, the Representative for Children and Youth released a report into the deaths of Kaitlynne, Max and Cordon Schoenborn.[8] The provincial government responded through the creation of a new Provincial Office of Domestic Violence (PODV) within the Ministry of Children and Family Development (MCFD). The PODV is coordinating the cross-government *Action Plan* with the Ministries of Justice, Children and Family Development, Health, Education and Social Development all providing input. The Ministry of Justice continues to work with PODV to enhance policing responses and police investigations into domestic violence.

In an ongoing effort to keep pace with emerging best practices in the area of domestic violence, the ministry has made significant enhancements to the training provided to police officers dealing with domestic violence

6 Ministry of Public Safety and Solicitor General. (2009). Verdict at coroner's inquest: *Findings and recommendations as a result of the inquest into the deaths of Kum Lea Chun, Moon Kyu Park, Christian Thomas Jin Young Lee, Yong Sun Park, and Hyun Joon Lee*. Victoria, BC: Ministry of Public Safety and Solicitor General.

7 Representative for Children and Youth. (2009). *Honouring Christian Lee: No private matter: Protecting children living with domestic violence*. Victoria, BC: Representative for Children and Youth.

8 Representative for Children and Youth. (2012). *Honouring Kaitlynne, Max and Cordon: Make their voices heard now*. Victoria, BC: Representative for Children and Youth.

cases. Of note, the Domestic Violence Training Project consists of systematically built provincial training programs for all police in the province.[9]

Focus on police training

The Ministry of Justice recognizes that police performance and accountability is enhanced through the availability of high quality training opportunities. The provincial government provides an annual grant to the JIBC Police Academy to deliver training to municipal police departments. In addition to the tuition collected from recruits, this funding serves to support training for the new police recruits and further enhance the training of existing police officers. In-kind contributions in the form of instructors and use of facilities from police departments are an important aspect of the training experience at the JIBC Police Academy. The provision of training for municipal police in British Columbia is seen as a partnership between the various stakeholder groups.

Police training in British Columbia is undergoing standardization and restructuring in order to be efficient, effective and accountable. In 2008, the *Police Provincial Learning Strategy* (*PPLS*) was created. The *PPLS* provides a framework to rebuild and streamline the training processes that currently exist. The principles of the *PPLS* are that police training must be:

- Defensible: the training development processes and the content itself is evidence-based and will stand up to legal scrutiny;
- Effective: the training provides results in required and measurable performance in the field; and,
- Accessible: the training is available to all British Columbia police officers who need it, when they need it.

Today, a renewed and strengthened relationship exists between the JIBC Police Academy , the RCMP Pacific Regional Training Centre and the provincial government.[10] In addition, since 2009, the Ministry of Justice has overseen the development of a number of systematically built training programs for all police in the province. These courses were created in close consultation with police and non-police experts and include courses such as the domestic violence training courses referenced above as well as training related to the use of force.[11]

9 This training supports *VAWIR*, promotes evidence-based, risk-focused domestic violence investigations, and it must be taken by all front-line officers and supervisors in the province. Course one: Evidence-based, Risk-focused Domestic Violence Investigations was launched in 2009 and has now been taken by over 8,500 officers across the province. The course is an ongoing part of RCMP cadet field coaching in British Columbia and Justice Institute of British Columbia (JIBC) police recruit training for the municipal police. Course two: Assessing Risk and Safely Planning in Domestic Violence Investigations was launched in July 2013. This course builds on course one and provides front-line investigators with a more in-depth understanding of how to assess and manage the risk factors in domestic violence cases. In conjunction with the training, Policing and Security Branch led the province-wide implementation of a standardized PRIME template and Reports to Crown Counsel (RCC) heading guide for all domestic violence cases. PSB worked closely with the Criminal Justice Branch and the Provincial Office of Domestic Violence on this project in order address an identified need to standardize how police investigate and document domestic violence risk factors in RCCs. PSB will continue to monitor implementation of the training and templates and may consider a BC Provincial Policing Standard to ensure adherence to the investigative requirements in this area.

10 A strengthened committee structure to guide implementation of the *PPLS* across British Columbia has been established. There is now a clearer governance structure for police training at the JIBC PA. In addition, there is improved communication between training bodies (i.e. training sections for the IMPDs, and the RCMP at PRTC), increased reliability in training development, documentation practices, and the sharing of existing training resources.

11 Crisis intervention and De-escalation (CID) Training (developed in conjunction with British Columbia Provincial Policing Standard 3.2.2) is mandatory training on the communication skills that promote effective, non-violent interventions in a crisis situation. The training emphasizes respectful and compassionate interactions and techniques suitable for use in mental health crisis situations. The British Columbia Conducted Energy Weapon (CEW) Operator Training (developed in conjunction with British Columbia Provincial Policing Standard 3.2.1) is mandatory training to ensure police CEW operators have access to the training they require to perform safely and effectively as CEW operators. The Certified Use of Force Instructor Course (CUFIC) development is currently underway as a joint endeavor with the JIBC to create a provincially-approved course for certification

Federal Provincial Territorial initiatives (FPT)

The Ministry of Justice has identified priorities for law reform that fall within federal jurisdiction. The Ministry of Justice works with its federal, provincial and territorial justice partners to push for these reforms and to promote effective, coordinated responses to crime in British Columbia and nationally. The Assistant Deputy Minister of Policing and Security Branch participates on the FPT Policing and Public Safety Steering Committee, and staff participate on related committees and working groups including the Coordinating Committee of Senior Officials-Criminal (CCSO Crim)[12], and the National Coordinating Committee on Organized Crime (NCC).[13]

Policing and Security Branch ensures its effective representation of British Columbia's needs and interests with respect to organized crime at the FPT level by chairing a Pacific Regional Coordinating Committee on Organized Crime (PRCC). The PRCC, made up of representatives from the law enforcement community, also promotes coordination of anti-organized crime activities throughout the province.

The Ministry of Justice will continue to work with its federal, provincial and territorial counterparts on key policing and public safety issues, in consultation with local stakeholders.

Current drivers of reform

Families First Agenda for Change

The *British Columbia Policing and Community Safety Plan* meets the Premier's commitment to develop a long-term, strategic plan for policing. It was also an opportunity for the provincial government to engage communities in discussions about crime prevention activities and priorities. The development process was led by the Policing and Security Branch and the Community Safety and Crime Prevention Branch and focused on engagement with British Columbians and collaboration with police, community leaders and members of the social service sector. This provided British Columbians with an open and transparent view of the process for developing the *Plan* and provided opportunities for meaningful input.

Ministry of Justice reform initiatives

A separate but related reform initiative is the provincial government's overall justice reform initiative[14] which was launched in February 2012 to address issues in the justice system and identify actions that the provincial government, the judiciary, Crown counsel, the legal profession, police and others could take to provide more timely and effective justice. In October 2012, the provincial government released *White Paper, Part One: A Modern, Transparent Justice System*, which outlined the overall vision for reform and provided strategies to use business intelligence, coordinated planning and decision-making to ensure a well-functioning, transparent justice system.

of use of force instructors. This is a systematically built certification process that will become the provincial standard and guide training for all use of force instructors in this critical area. A key deliverable of the course is that use of force instructors are able to demonstrate and promote the use of CID techniques where applicable during all types of use of force training.

12 The Coordinating Committee of Senior Officials-Criminal (CCSO Crim) is a core group of senior justice officials that represent FPT jurisdictions across Canada and has responsibility for overseeing and supervising most FPT Working Groups that deal with criminal justice issues. Policing and Security Branch participates within a number of FPT CCSO Crim working groups including organized crime and cyber-crime to provide information, analysis, and recommendations on key issues.

13 The NCC provides a link between FPT officials and representatives from the law enforcement community to share information about organized crime and the responses to organized crime, discuss strategic policy priorities, and promote effective coordination of strategies to combat organized crime in Canada. In carrying out its work, the NCC reports to the FPT Policing and Public Safety Steering Committee and policing committees such as the Canadian Association of Chiefs of Police – Organized Crime Committee and the Canadian Integrated Response to Organized Crime (CIROC).

14 BC Justice Reform Initiative, 2012.

In February 2013, at the same time this *Plan* was released for consultation, the provincial government released *White Paper, Part Two: A Timely and Balanced Justice System*, which expands the provincial government's reform plan and presents steps that will be taken, both immediately and over the long term, to ensure that the justice system is both timely and balanced. The provincial government is committed to implementing its vision for reform and making the justice system more responsive to the needs of citizens. *Part Two* contains a combination of concrete Action Items that will begin immediately, as well as visionary ideas for change that will be initiated as funding becomes available. *Part Two* focuses on innovative, front-line operations and services to the public, as well as internal policy with respect to administrative, civil, criminal, and family law. It also takes into consideration the findings and recommendations of the *Forsaken: The Report of the Missing Women Commission of Inquiry*[15] (*MWCI Report*) and the Action Items presented in this *Plan*.

The Missing Women Commission of Inquiry Recommendations

On December 17, 2012, Commissioner Oppal released the findings and recommendations from his public inquiry examining the police investigations into missing and murdered women in Vancouver's Downtown Eastside. The *MWCI Report* contains 63 recommendations, a large number of which pertain to police-related matters. Many of these address police investigations of missing women, suspected multiple homicides, and homicide investigations involving more than one investigating agency. Other areas of policing reform are also identified, such as measures to promote equality in the delivery of policing services, increase responsiveness to the needs of vulnerable persons, address the structure of policing in the Lower Mainland, and enhance governance of police.[16]

As Commissioner Oppal was specifically mandated in his terms of reference to examine the police investigations, due consideration was given to the *MWCI Report* recommendations in the development of this *Plan*.

The rising cost of policing

All levels of government are concerned with the impact of the rising cost of policing. These costs are related to increases in the number of sworn officers, compensation, workplace safety requirements and the complexity of police work.[17] Between 2002 and 2010, policing costs in Canada increased by 62 per cent.[18] In the same period, the number of sworn officers across the country increased by 19 per cent.

Typically, salaries and benefits account for over 75 per cent of a police service's budget. The salary for constables in nine major police services in Canada increased by 28 per cent between 2002 and 2010. Overtime, benefits and administration also drive increases as do factors related to the complexity of the criminal law. Although not linked, this is occurring at a time where the public are seeing reported crime rates and crime severity declining. This is a trend in most developed countries.[19] Despite the increasing costs and number of police officers, Canada still has fewer police officers per capita than many comparable countries.[20]

15 Oppal, 2012.

16 In addition to policing reforms, other recommendations involve healing and reconciliation, changes to Crown counsel policies and practices, broader response and community engagement with respect to missing persons (e.g., additional ways to report information about missing persons), and services and support to prevent violence and enhance the safety of women.

17 Other cost drivers include changes to policies, legislation, and procedures that increase investigation workload. Organized crime networks have become progressively pervasive at the domestic and international levels. Growing reliance on information technologies has also increased vulnerability to cybercrimes, including identity theft, intellectual property crimes and disruption of critical infrastructure.

18 Statistics Canada, 2011, 18.

19 Public Safety Canada, 2012, slide 3.

20 Total Police Personnel at the National Level. Out of 15 industrialized nations, Canada ranks 11th in terms of the number of officers per 100,000 population. Canada has less officers per capita than countries such as Japan,

In February 2012, the Federal/Provincial/Territorial Assistant Deputy Ministers – Policing and Public Safety Steering Committee established the Economics of Policing Working Group to collect, consolidate and share information on policies, practices, and programs that aim to improve the overall efficiency and effectiveness of policing in Canada. British Columbia is an active participant in this process. The Council of Canadian Academies (CCA) is also researching the issue of the future of policing in Canada.[21]

During the consultation and engagement process, local governments and communities indicated that the cost of policing is a significant challenge to sustainability and expressed a desire to close the gaps between community expectations and the services available. Therefore, the concern with the rising costs of policing was a key consideration in the formulation of the *Plan*.

Engagement activities

A unique feature of the development of the *British Columbia Policing and Community Safety Plan* is the level of community consultation and stakeholder engagement in the development process. Five specific engagement activities were undertaken: regional community and stakeholder roundtables, focus group meetings, an interactive website, a telephone survey, and public and stakeholder consultation on the draft *Plan* released in February of 2013. Detailed descriptions of the findings from this process are available in *Appendix A*.

Regional community and stakeholder roundtables

A series of regional stakeholder roundtables were held in nine locations around the province between April 2012 and June 2012. Participants included local governments, First Nations representatives, community leaders, social service organizations and local police.

Overall, key messages from the roundtables included:

- Police are responsible for responding to a growing range of issues, some of which cross over into socio-economic and health-related matters. Mental health-related calls in particular were seen as creating a significant strain on policing. All stakeholders expressed a desire for greater collaboration across justice, health and other social service sectors to provide effective and efficient responses to these issues.
- Local governments expressed frustration over the growing costs of policing. There was strong interest in clarifying each level of government's responsibilities with respect to policing and developing a fair and equitable funding formula that reflects those responsibilities.
- There was strong interest in finding ways to make policing more efficient and accountable. Examples of specific strategies that were discussed include: expanding the role of others on the law enforcement continuum (sometimes referred to as tiered policing); the need to develop valid, comparable measures for policing; and ensuring that the public has opportunities for input into policing.
- Participants expressed interest in seeing the provincial government demonstrate stronger leadership through the development and implementation of a provincially-led crime prevention strategy. Funding for crime prevention and for services to victims was also a key theme of discussion. Roundtable participants also explored the importance of local coordination, citizen engagement and the use of volunteers.

Sweden, New Zealand, the United Kingdom and Australia (United Nations Office on Drugs and Crime, 2008).

21 The CCA is assessing the current evidence and knowledge on the future of Canadian public policing models. The Canadian Association of the Chiefs of Police and the Canadian Federation of Municipalities are also engaged in the research and development of initiatives to ensure policing in Canada remains sustainable.

- A comprehensive review of the feedback from the roundtables is available in a summary report on the Police Services Division website at ***http://www.pssg.gov.bc.ca/policeservices/publications-index/docs/PoliceRoundtable_SummaryReport.pdf***

Focus group meetings

Stakeholders and subject matter experts were invited to participate in focus groups in September and October 2012, to further discuss key issues that emerged from the roundtables. Meetings were also held with First Nations with *Tripartite Agreements* and the RCMP Local Government Contract Management Committee. The focus groups identified potential strategies to address the issues at hand and provided direction on priorities for further development and consideration.

The key themes from the focus groups were that:

- Developing prevention and intervention programs for youth and families, including providing youth with alternatives to the gang lifestyle is essential to addressing the recruitment into gangs.
- A provincially-led crime prevention strategy is required that promotes community engagement and accountability mechanisms for investments made.
- Future discussion around police funding models must be preceded by a review of police functions and services to determine which ones are a provincial, municipal or federal responsibility.
- The roles and mandates of the full spectrum of law enforcement, private security and public safety groups need to be examined.
- Integrated initiatives that have proven to be successful in helping people with a mental illness and/or drug addiction should be promoted and expanded.
- A common set of performance indicators to measure policing across the province in a consistent manner is required.
- Communities should be given an opportunity to define their policing priorities and to provide input into how police services are delivered.
- Communication and education are critical to building stronger relationships and establishing trust between police and First Nations communities.
- Greater collaboration is required between the justice system and related social service and health systems.

Interactive website

A blog was launched in May 2012 to report on the progress of the *Plan* and provide opportunities for public input. Summaries of the stakeholder roundtables were posted following each event, and questions inspired by the roundtable discussion were posted so that others could join the conversation. Members of the public could also submit comments by email through the blog.

While the level of participation was low, the feedback was largely consistent with the roundtable discussions. Comments were received to the blog and by email about such issues as: the need for better responses to mental health and addictions and a stronger focus on prevention and youth; the structure of policing services delivery (e.g., regionalization and the use of the RCMP); support for increased use of others on the law enforcement continuum and civilians (e.g., crime analysts); concerns about police-community relationships and trust; and police training needs.

The blog is now closed.

Telephone survey

A telephone survey covering topics such as satisfaction with policing, perceptions of safety and personal experience with crime was conducted in June and July 2012. A total of 2,400 surveys were completed, using rigorous sampling and weighting methods.

The results highlighted a number of positive findings, including overall substantial confidence in police. Similarly, the vast majority (94 per cent) of respondents were satisfied with their personal safety from crime. The survey also identified areas for improvement. For example, over one-third of the 17 per cent of British Columbians that reported being a victim of at least one crime in the past 12 months did not report the crime. The results also highlight areas where police performance could be improved: only 59 per cent of people said that the police did a good job of treating people fairly, and only 48 per cent of people said that police did a good job of supplying information to reduce crime.

The complete survey results are available in Supplemental Document #1 posted on the Ministry of Justice website at: ***www.pssg.gov.bc.ca/policeservices/publications-index/index.htm***

Release of the draft *British Columbia Policing and Community Safety Plan* for consultation

In February of 2013, a draft version of the *Plan* was released for consultation. A copy was posted on the blog for public comment. Stakeholders and roundtable participants were contacted requesting their input. The draft *Plan* was initially available for comment until August 31, 2013 with an extension until September 30, 2013.

DRAFT CONSULTATION FEEDBACK

Feedback was received from a variety of stakeholders and members of the public either through written submissions, e-mails, or blog posts. Generally speaking, feedback on the *Plan* was positive; however, many respondents were of the view that the draft *Plan* did not go far enough in proposing reforms for policing.

Other themes that emerged from the feedback included comments concerning the:

- Continuum of policing;
- Rising costs of policing and its relationship to the structure and funding of police services in the province;
- Interaction between mental health and policing; and,
- Crime prevention programs.

Some updates and minor changes have been made to the *Plan*. For example, a new Value (concerning the relationship between police and First Nations) and a revised Value (concerning the importance of input and collaboration from community stakeholders) are included.

In addition, some feedback indicated that additional clarification of RCMP accountability to the provincial government was required. Sections referencing the RCMP have been revised.

It was also determined that the inclusion of the five "Supplemental Documents" as separate files may have inadvertently led readers to miss the additional information and context that these documents were designed to provide. The final version of the *Plan* has been restructured to include the contents of two of the Supplemental Documents, two are attached as appendices, and one remains a Supplemental Document posted on the Ministry of Justice website.

Finally, in recognition of the passage of time between the initial release of a draft of the *Plan* and its final release, a Status Update table is included in the Conclusion.

PART II – British Columbia Policing and Community Safety Plan

Introduction

Local and global factors like changing demographics, the global economy, advances in technology and new types of criminal behaviour impact the delivery of policing services. Communities want more input into local policing priorities, and expect a high degree of accountability from their police agencies. In times of economic uncertainty, there is often disparity between what communities want and the ability of police to meet those expectations.

In a democracy, the relationship between government and police is complex. Police must be able to conduct investigations and maintain order independently, without political or other influence, and be able to exercise authority to preserve the peace, protect the public and enforce the law effectively. However, police independence must be balanced against accountability to the public and to civilian authority. Police must both uphold and adhere to the rule of law.

In British Columbia, the relationship between the provincial government and police is governed by the *Police Act*, and the minister has the duty to ensure that there is an adequate and effective level of policing and law enforcement in British Columbia. The provincial government sets the direction, strategic framework, performance expectations and accountability mechanisms for policing, to meet demands now and into the future.

While many reforms were made during the past 15 years, policing in British Columbia continues to evolve. In the future, the legacy of those reforms will continue to influence the direction of policing in the province. In the immediate term, the present global fiscal challenges will have considerable impact on the speed and direction of reform.

Policing is adaptive and reform is evolutionary. This document, the *British Columbia Policing and Community Safety Plan* (hereafter the *Plan*) is designed to guide that evolution over the next three, five and 10 years.

Vision and Values

Vision

Policing in British Columbia will be globally connected and community focused. Innovative, effectively governed and efficiently managed, it will operate seamlessly and collaboratively across a spectrum of law enforcement and security responses to public safety. Policing will be accountable, performance based and evidence-led and will work in an integrated manner with justice, social sector and community partners.

Values

The provincial government is committed to integrity, fiscal responsibility, accountability, respect and choice.[22] Additional values underlying the development of the *Plan* are that the Ministry of Justice:

- Respects the independence of the police in a free and democratic society and their arm's length relationship with governments.
- Respects the shared role of all levels of government and communities in the provision and funding of policing.
- Recognizes that police agencies are ultimately responsible and accountable to civilian authorities and that it is the role of the provincial government to set an appropriate regulatory framework.
- Recognizes that policing services must be delivered free from bias and discrimination.
- Recognizes the importance of strong relationships between the police and First Nations.
- Recognizes that the successful implementation of any police reform requires the support of local governments, input and collaboration with community stakeholders, and cooperation with all justice sector partners.
- Recognizes that modern policing and governance structures must support flexibility in service delivery approaches and be reflective of the diversity of needs in both rural and urban British Columbia.
- Recognizes that policing reform initiatives must be based on rigorous academic and applied research, police services must be performance-based, and the outcomes of effective policing must be measurable.

22 Government of British Columbia, 2011.

Themes and Action Items

Theme #1 – Rational and Equitable: policing is structured, governed and funded in a rational and equitable manner

■ Enhance structure and funding options for policing

ACTION ITEM #1: The Ministry of Justice will work in collaboration and consultation with local governments, other key stakeholders and a committee of external experts to:

a. Define and clarify policing responsibilities at the federal, provincial, and municipal government levels;

b. Consider models of service delivery ranging from further integration to the regional delivery of services while retaining local community-focused policing; and,

c. Develop options for funding/financing models that reflect each level of government's policing responsibility and distribute costs accordingly.

CONSULTATION FINDINGS: Stakeholders at the roundtable consultations and focus groups are generally satisfied with the police services they receive. However, many view the current model of funding and delivering of policing services as unfair or inequitable. While there was not a focus group held specifically on the structure of policing, the issue arose during several other focus groups.

The issues are complex and not all stakeholders are in agreement about which specific aspects of police financing or structure are inequitable. There was no consensus on the best way to resolve the issues though there was agreement that a dialogue must take place.

STRUCTURE

CHALLENGE: The structure of police services in British Columbia must evolve to meet the needs of communities and meet current and future challenges. Traditional police service delivery models were structured to respond to crimes that occurred in specific, confined geographic areas. Increasingly, crime crosses jurisdictional boundaries, so policing must deliver a unified strategy to deal with these issues, while ensuring that communities receive responsive and relevant police services. This understanding has been the foundation of integration of specialized policing functions and is the subject of considerable reflection within the *MWCI Report*.

The provincial government has supported the integration and consolidation of police services and provided support to centralize services that are highly technical, capital intensive and specialized. Examples of integrated specialized services include forensic identification, homicide units, and anti-gang units. Models across the province provide some municipalities with services from the Provincial Police Force, others from a regional integrated service, others provide the service themselves and yet others contract with another police agency for the service. There is a need to normalize and rationalize these structures to the benefit of the province as a whole and increase the level of participation.

Despite initiatives to integrate police services, regionalization of police forces continues to be a topic of discussion in the Lower Mainland and Capital Region. Significant consideration was given to the structure of policing in the Lower Mainland during the Missing Women Commission of Inquiry and Commissioner Oppal concluded that a unified police force is required for the Greater Vancouver area. He recommends that the provincial government provide the direction and commitment required for its creation, including consultation with stakeholders and independent experts to develop a proposed model and implementation plan. Commissioner Oppal acknowledges that regional policing is a controversial issue, with ardent supporters and

detractors. Careful consideration of the possible range of models will ensure that the underlying interests of all stakeholders can be addressed while a commitment to community focused policing is retained.

In the current policing structure, formal mechanisms are needed to enable small municipalities or unincorporated areas which are policed by the Provincial Police Force to have input into their local police service or influence the levels of service they receive. This would enable communities to hire additional police officers to focus on specific priorities (e.g., traffic, youth), deliver particular police programs, or deal with an annual special event. There are other situations where additional policing may be required for a longer period of time due to a temporary increase in population (e.g., seasonal holiday destinations such as a lake or ski hill, mining or forestry camps in rural areas, among others).

Acknowledging that crime crosses geographic and jurisdictional boundaries brings the need for greater clarity around the roles and responsibilities of each level of government to avoid the inefficiencies of duplication of effort, overlap in service delivery and gaps in services.

FUNDING

CHALLENGE: The current model of funding police services is perceived as unfair or inequitable by many local governments. Of concern to some are the cost-sharing arrangements between the different levels of government and the current structure, or service delivery model, which both contribute to substantial differences in the amount local property taxpayers contribute to policing costs.

Municipalities delivering municipal policing pay a different percentage of the cost of providing police services depending on the population of the municipality and whether the police service is provided by a municipal police department or the RCMP. Municipalities policed by a municipal police department pay 100 per cent of the policing costs. Municipalities policed by the RCMP pay either 70 per cent or 90 per cent of policing costs depending on population. The difference is paid for by the federal government in recognition of the benefit to the Government of Canada of maintaining a federal policing presence across the country.

Unincorporated areas and municipalities under 5,000 population are policed by the Provincial Police Force. These areas pay the provincial police tax which recovers only a small portion of the cost of providing general duty and general investigative police services to these communities. The 5,000 population threshold creates a sharp increase in costs as local taxpayers go from paying a nominal amount towards front-line police services to paying 70 per cent or more of municipal policing costs.

In many areas of the province, one municipality may act as the business and entertainment centre for residents of the surrounding communities which may result in that "core city" having higher crime rates and higher policing costs. Because the police service is delivered at the municipal level, residents of the "core city" pay the costs for policing an area which arguably benefits residents within the larger geographic area. Some stakeholders feel it would be more equitable to distribute these costs among the larger area. Similarly, municipalities that attract a high number of tourists may have greater public safety challenges and increased policing needs, which are paid for by local residents, which is perceived as unfair by some stakeholders.

Many municipalities also feel they are subsidizing provincial and federal policing by having their municipal police officers involved in the investigation of what they believe are issues that are the responsibility of the provincial or federal governments.

There are inconsistencies in the way certain specialized or integrated teams/services are financed throughout the province. The financial arrangements vary widely so some municipalities may pay all or some of the actual costs, others may pay a flat fee, others provide officers to the team, and still others may not contribute

anything towards the team/service. There are other agreements where multiple municipalities receive multiple regional services, but each municipality contributes by paying for only one of the services.

NEXT STEPS: Beginning in 2013 and with a target date for completion in Fall 2015, the Ministry of Justice will, with the participation of key stakeholders such as local government and a committee of experts, commence a comprehensive project to address Action Item #1.

Enhance the continuum of policing and public security options available

ACTION ITEM #2: The Ministry of Justice will develop a public safety model including existing and new categories of law enforcement personnel to provide cost-effective services in support of policing.

CONSULTATION FINDINGS: During the consultation, it was agreed that police across the province are becoming overburdened. Participants also agreed that law enforcement and public safety functions could be delivered in more cost-effective ways. Many felt that the full spectrum of law enforcement and public safety functions (special provincial constables, auxiliaries, by-law officers, private security) should be examined in terms of their roles and mandates to potentially reduce the burdens and costs of policing.

CHALLENGE: The Ministry of Justice recognizes that police agencies are challenged to deliver front-line policing within their existing resources and there is increased need for supplemental law enforcement and other support services.[23] It is critical however, that appropriate accountability systems and adequate training and standards are in place.

NEXT STEPS: Beginning in 2014, the Ministry of Justice will conduct an in-depth review of similar models in other jurisdictions and conduct a comprehensive review of law enforcement, private security and public safety groups in the province and their legislative authorities with a target date for completion of March 2016. A long-term goal is an enhanced framework for categories of law enforcement personnel which provide support to policing.

First Nations policing

ACTION ITEM #3: In consultation with First Nations, police, the Ministry of Aboriginal Relations and Reconciliation, local governments and the federal government, the Ministry of Justice will reform the service delivery framework of the First Nations Policing Program in British Columbia.

CONSULTATION FINDINGS: During the roundtable and focus group discussions participants agreed that communication and education are keys to building and strengthening relationships and trust with First Nations communities. Greater multi-agency collaboration and community engagement are needed to address issues such as drug and alcohol addiction, mental health and domestic violence. Participants discussed issues with the recruitment and retention of RCMP-First Nations Community Policing Service (FNCPS) members, lack of sustainable and equitable funding for the FNCPS, inadequate police response times, enforcement of band by-laws, and lack of culturally appropriate alternatives to the justice system.

CHALLENGE: Recent Ministry of Justice initiatives have focused on delivering First Nations policing services and programs that are culturally sensitive and responsive to the needs of First Nations communities. This includes increasing First Nations community engagement through Letters of Expectation which outline

23 For example, the Special Provincial Constable (SPC) program continues to grow. Many organizations require or request SPC appointments to deliver their mandate and enforce program-specific legislation (for example, Gaming Policy and Enforcement, Liquor Control and Licensing, and Prevention and Loss Management Services). There are many challenges with regard to consideration of SPC agency applications, including: increased demand and associated complexities of agency program mandates; provision of standardized review and control; identification of the necessary training specific to need; provision of training in a cost-effective and timely manner; and provision of a rigorous oversight process.

community goals and objectives; conferences; regular on-site program visits; enhanced support to Community Consultative Groups; and the distribution of educational materials to police officers.[24] Processes were put in place to review RCMP financial and policy-related issues as they arise, monthly activity reports provided to First Nations communities, and results of annual questionnaires sent to First Nations communities. A number of positions were created, including eight new CTAs, 17 RCMP-FNCPS positions, an Aboriginal Gang Awareness Coordinator and Aboriginal Recruiter, and four senior Aboriginal officers.

There is still a lack of clarity about local governments' responsibility and funding for First Nations policing services delivered within or near municipal boundaries. Questions also exist about the Government of Canada's constitutional authority to provide policing services on reserves. What this means in terms of future policy, funding levels and cost sharing remains to be discussed.

NEXT STEPS: The *First Nations Policing Agreements* are currently being renegotiated with the Government of Canada. These new agreements will outline the cost share and budget to support First Nations policing in the province. It is anticipated that these agreements will be completed in March 2014. As part of this process, the Ministry of Justice will continue to work closely with First Nations and the RCMP to develop a strategy to deliver professional and culturally appropriate policing services to First Nation communities. The strategy will address the current fiscal realities, community engagement, performance metrics, recruitment and retention of police officers, the deployment of policing resources, and enhancing the governance structure. The ministry will also review the legal, constitutional and financial aspects of providing policing on reserve lands by September 2014.

Theme #2 – Accountable: police are accountable to civilian authority

Enhance community engagement

ACTION ITEM #4: In support of community-based policing, the Ministry of Justice will ensure that British Columbia communities have meaningful opportunities for significant input into local policing.

CONSULTATION FINDINGS: Participants in the roundtable sessions said they want more input into policing priorities and the way police services are delivered in communities. It became apparent that the existing structures and processes for community input are, in many cases, not meeting expectations. Lack of awareness of existing processes may also be a factor.

CHALLENGE: Setting the goals, priorities and objectives for a municipal police department is one of many important functions of a municipal police board. In practice, many municipal police boards and municipal police departments undertake various forms of community engagement and consultation; however, there is currently no mechanism to ensure this occurs.

Municipalities and rural areas of the province policed by the RCMP are not governed by municipal police boards; however, other official avenues for public and community input into policing are available. The RCMP requires that all Detachment Commanders and Unit Commanders develop an Annual Performance Plan (APP). In doing so, they are expected to seek input from local residents, stakeholders, community leaders and organizations regarding the concerns and issues of the community. The APP must be signed by a senior representative

24 "The Spirit Has No Colour" video and discussion guide promotes discussion and understanding of the status of Aboriginal peoples in British Columbia, their culture and traditions, and the ongoing effects of residential schools and the child welfare system. While this was not mandatory training, every police agency and detachment in British Columbia was sent a free copy of the training package. First Nations orientation package were also distributed to all detachments.

of the community, such as the Mayor, Band Chief or Chief Administrative Officer. APP's are reviewed quarterly by the Detachment Commanders and Unit Commanders, and are also subject to review by RCMP senior management teams to ensure oversight and accountability.

Commissioner Oppal reaffirmed his commitment to community-based policing in his *MWCI Report* and noted that many of the recommendations he made regarding community engagement principles in his 1994 report, *Closing the Gap: Policing and the Community*[25] were not fully implemented. Of particular relevance are the 1994 recommendations that: (i) the establishment of police committees in communities policed by the RCMP be mandatory; (ii) all police boards and police committees be required to develop a community-based policing plan, in consultation with the community and with assistance and support from provincial authorities responsible for policing; and (iii) copies of community-based policing plans be filed with provincial authorities responsible for policing, for their consideration during audits.

NEXT STEPS: As part of a long-term policing standards development process that is currently underway and will continue over the next number of years, the Ministry of Justice will develop policing standards that will require police agencies and/or police boards and committees to provide ongoing opportunities for community members and stakeholders to provide input about policing and law enforcement in their communities.

■ Strengthen police board ability to effectively govern

ACTION ITEM #5: The Ministry of Justice will review the current police board structure, function and training, and make enhancements and improvements where necessary.

CONSULTATION FINDINGS: Police governance and accountability was discussed at length by roundtable participants and stakeholders, usually within conversations concerning community input. Police board members also participated in the roundtable sessions.

CHALLENGE: In his *MWCI Report*, Commissioner Oppal identified some concerns with the current operation of police boards, and recommended that steps be taken to ensure representation of vulnerable and marginalized members and Aboriginal people. The Ministry of Justice works closely with the British Columbia Association of Police Boards (BCAPB) and municipal boards to identify civilian governance issues. In partnership with the BCAPB, police boards and the JIBC, the ministry supports an annual provincial conference for board members. Education sessions for board members are developed in association with JIBC and the BCAPB and focus on governance issues including current and future policing challenges. The BCAPB has expressed support for a number of proposed legislative amendments to the *Police Act* as well as approaches to strengthen police board governance.

NEXT STEPS: Beginning in 2013 and with a target completion date of March 2015, police board structure, function, selection practices and training will be reviewed and enhancements will be made where necessary. The Ministry of Justice will also work with the BCAPB and the JIBC to develop relevant training opportunities.

■ Support bias-free and equitable policing

ACTION ITEM #6: The Ministry of Justice will conduct a study to examine the practices and policies of police agencies in British Columbia related to ensuring bias-free policing and will, where required, ensure that audits are completed related to bias-free policing and the equitable treatment of all persons.

CONSULTATION FINDINGS: One of the key themes identified at the roundtable discussions was the importance of awareness and understanding of all community members, including marginalized or minority

25 Oppal, 1994.

community members and the First Nations culture. This is necessary to deliver effective responses to criminal activity and crime prevention strategies, as well as to promote positive police-community relationships. Participants wanted strategies that could be useful in promoting bias-free policing.

CHALLENGE: In his *MWCI Report*, Commissioner Oppal concludes that systemic bias and negative stereotypes on the part of police about the missing women, rather than overt or intentional discrimination, contributed to a failure to appropriately prioritize and effectively carry out investigations. Commissioner Oppal recommends that the Ministry of Justice conduct equality-in-policing audits to identify potential bias in the delivery of policing in British Columbia. He also recommends the creation of a provincial policing standard that creates an explicit duty for police to deliver policing in a non-discriminatory manner, to help ensure that this obligation is integrated into policing operations. The obligation is broader than providing services in the same way to all people; it includes adjusting service delivery as needed to remove barriers and ensure that services are accessible to vulnerable persons.

NEXT STEPS: The Ministry of Justice will review the current practices and policies of police agencies related to ensuring bias-free policing with a target completion date of March 2015. The review will involve external experts and ensure meaningful community input in the process. Where identified in the review, and within three years of its completion, the ministry will ensure that appropriate audits are completed of police agencies operating in British Columbia related to bias-free policing and the equitable treatment of all persons. Subsequent to the completion of the audits, the ministry will develop policing standards that ensure bias-free policing.

Develop provincial policing standards

ACTION ITEM #7: The Ministry of Justice will continue developing provincial standards for police agencies in the province. Priority will be given to standards consistent with those recommended by Commissioner Oppal in his *MWCI Report* governing the investigation of missing persons, complex investigations involving serious crime and inter-agency cooperation.

CHALLENGE: One way police are held accountable is through provincial policing standards. Amendments to the *Police Act* in 2010 and 2012 gave the director of police services, with the approval of the Minister, the authority to set legally binding provincial standards for all police in the province. Standards provide guidance on aspects of policing that raise important questions of public policy. This principle is discussed by Commissioner Oppal in his 1994 inquiry into policing in British Columbia and by Justice Braidwood in his 2009 study commission on the use of conducted energy weapons.[26] Binding provincial policing standards are applicable to all police agencies in the province, including the RCMP.

The provincial government, the Vancouver Police Department, the RCMP and other police agencies have undertaken a number of initiatives to improve the standard and capacity of investigations since the 2002 arrest of Robert William Pickton. However, in his *MWCI Report*, Commissioner Oppal identifies three key issues to be addressed through provincial policing standards:[27]

- **The investigation of missing persons** – Commissioner Oppal identifies a number of critical failures in the police investigations of the missing women. These include aspects of departmental policies which delayed the investigations, poor risk assessment, and variations in missing person policies between police agencies which created confusion as to which agency was responsible for an investigation. He identifies 15 components to be addressed ranging from initial report taking through to file conclusion.

26 Braidwood, 2009, 61.

27 An overview of relevant reforms is provided in Volume III of Commissioner Oppal's report (Oppal, 2012, Vol. 3).

- **Complex investigations involving serious crimes** – Commissioner Oppal concludes that the failure of police to employ Major Case Management (MCM)[28] practices, policies and technical solutions during the missing and murdered women investigations directly contributed to gaps and delays in the investigations. He recommends that the provincial government create standards that mandate and ensure accountability for the use of MCM by police in British Columbia and that issues related to establishing a single electronic MCM system for British Columbia be addressed. MCM standards will facilitate the coordination of all law enforcement agencies involved in multi-jurisdictional cases and ensure the sharing of information between investigations in a manner that is based on co-operation among individual police services. MCM standards will also address the need for consistency and accountability throughout the province with respect to targeting methods for police intelligence operations and to ensure that all police agencies are focusing on the individuals and groups who pose the most significant and immediate threat to public safety.[29]
- **Cooperation and coordination amongst police agencies in complex investigations involving serious crimes** – Commissioner Oppal concludes that the degree of inter-agency cooperation and coordination with respect to the missing women investigations was inadequate and recommends that the standards also provide specific direction with respect to multi-jurisdictional and multi-agency investigations.

NEXT STEPS: In 2013 the Ministry of Justice will strike an advisory committee to ensure that standards are developed in consultation with police and other stakeholders. As part of a long-term policing standards development process that is currently underway and will continue over the next number of years, standards governing the investigation of missing persons, MCM and inter-agency cooperation and coordination on complex cases will be in place by 2015.

In addition, the Ministry of Justice will work with PRIME-BC and the British Columbia Association of Chiefs of Police (BCACP) to examine options to identify a single MCM solution.

28 MCM structures an investigation by identifying clear goals and objectives, establishing lines of responsibility and decision making authority and creating infrastructure for recording, storage, and sharing of information and contributing to operational efficiencies. MCM models are comprised of a centralized coordinating body, investigative standards, standardized training, and standardized case management technology (e.g., software). MCM software is critical in managing the large amounts of information that must be gathered, analyzed, stored, and in some cases, shared between policing agencies in major cases.

29 In recent years, the policing community identified the need for a Provincial Tactical Enforcement Priority (PTEP) targeting model, with a structured accountability framework. In 2010, the collection and management of gang intelligence was moved into the newly created Provincial Intelligence Centre to align with other intelligence-gathering bodies in the province. Through this, the need for a Provincial Tactical Enforcement Priority (PTEP) targeting model with a structured accountability framework became apparent. In 2012, the Combined Forces Special Enforcement Unit – British Columbia (CFSEU-BC) assumed lead responsibility for the continued development and implementation of the PTEP. In collaboration with municipal, provincial and federal law enforcement agencies a three-tiered targeting model was created. Under this three-tiered model federal resources focus on targets that operate across provincial/territorial and national boundaries while CFSEU-BC is responsible for developing a province-wide target group that is consistent with its mandate, and work with the municipal agencies that are responsible for developing and prioritizing local target(s). Timely information sharing between all agencies, at all levels, is key to ensuring that target selection and enforcement leads directly to a reduction in gang violence.

Theme #3 – Collaborative: police, governments and communities work collaboratively to meet justice and community safety goals

Enhance community safety

ACTION ITEM #8: In support of enhancing community safety, the Ministry of Justice will work with stakeholders to develop strategies to:

a. Support crime prevention efforts;

b. Support province-led crime reduction initiatives; and,

c. Support further development of civil/administrative law strategies to enhance community safety.

CRIME PREVENTION

CONSULTATION FINDINGS: Roundtable and focus group participants expressed a need for increased leadership, direction and consistency in crime prevention programming from one community to the next. They also identified a lack of metrics and measures for assessing the effectiveness of crime prevention approaches. There was a clear desire for a provincially-led crime prevention strategy that sets out a framework for crime prevention programming across communities and focuses efforts toward priority issues. Participants expressed the importance of identifying and communicating what works as well as a need to balance provincial leadership with the flexibility to meet local needs.

Participants identified the importance of working with youth in order to prevent crime. They wanted to see more activities for youth that promote resiliency such as those that build athletic skills and make cultural and cross-generational connections. Funding for victim service and crime prevention programs was also discussed. While victim service program funding and core crime prevention funding has been relatively stable, many raised concerns that crime prevention funding is offered in short cycles or on a one-time-only basis. Evidence-based programs that show positive outcomes have been unable to obtain long term funding. In their view, these initiatives are among the first things to be put aside when budgets become tight and police resources are consumed with responding to criminal activity.

CHALLENGE: The costs of crime are high for victims, offenders and society as a whole. The impacts are psychological, physical, emotional and financial, and can be inter-generational. Some studies have shown that the cost of measures to prevent crime can be much lower than the cost of the criminal justice system response to crime and yield long-term benefits. Because available crime prevention funding from both the federal and provincial governments is largely in the form of grants or other short term funding, sustainability is a challenge for many crime prevention initiatives.

Roundtable and focus group participants asked for a provincially-led crime prevention strategy that focuses efforts toward priority issues, using proven strategies, to reduce competition between organizations, foster coordination, and clarify the role of police in crime prevention.

NEXT STEPS: The Ministry of Justice will lead the development of a provincial crime prevention strategy by March 2014. In developing the strategy, the ministry will consider the key recommendations identified through consultation including, but not limited to, identifying priority issues, promoting evidence-led programming, and finding ways to identify and disseminate information about best and promising crime prevention practices.

CRIME REDUCTION

CONSULTATION FINDINGS: Three key community crime issues identified in the roundtables were prolific offenders, public disorder, and property crime. Roundtable and focus group participants described crime reduction initiatives as having had a profound impact in driving down local crime and disorder problems. There was strong interest in expanding the use of crime reduction to ensure that efforts are coordinated and crime is not displaced to other communities. Some of the barriers to undertaking collaborative crime reduction efforts were also identified, including issues related to information sharing, such as privacy and liability concerns. Participants felt these issues should be addressed at a policy level so that information can be shared safely between the different agencies that are often interacting with the same individuals.

CHALLENGE: Crime reduction initiatives focus resources to deal with specific crime problems in local communities, and are generally evidence-led and multi-agency in nature, requiring collaboration between law enforcement, governments, and other partners. They often have targets and measures assigned to them and occur over defined periods of time. In recent years, many police agencies and municipalities across British Columbia and Canada have implemented crime reduction initiatives.[30]

In the report, *A Criminal Justice System for the 21st Century: Final Report to the Minister of Justice and Attorney General Honourable Shirley Bond* (hereafter the *Cowper Report*) [31], a recommendation is made that a province-wide crime reduction plan should be developed under the direction of the BCACP in collaboration with justice officials.

NEXT STEPS: The Ministry of Justice will support the implementation of an evidence-based, province-wide crime reduction initiative in consultation with the BCACP and with local governments. Work commenced in 2013 with the appointment of a blue-ribbon panel on crime reduction, led by Dr. Darryl Plecas, Parliamentary Secretary on Crime Reduction. This initiative will continue to develop though 2015. Panel members will examine existing crime-reduction initiatives and research from other Canadian provinces and other countries as well as hold regional roundtable consultation sessions with stakeholders.

CIVIL/ADMINISTRATIVE LAW STRATEGIES TO ENHANCE COMMUNITY SAFETY

CONSULTATION FINDINGS: During the roundtables, participants described the positive impact that various initiatives designed to address problems through administrative processes or penalties have had in their communities. Examples included the implementation of Immediate Roadside Prohibitions, *Civil Forfeiture Legislation*, the use of electrical and fire safety inspection teams to disrupt the indoor production of marijuana and other illicit drugs, and the development and enforcement of bylaws addressing other community issues. These alternatives to criminal sanctions were seen as having a much swifter and, in some cases more effective, impact on the problem issue or behavior. These initiatives were also seen to alleviate police workload, increasing police capacity to respond to other crime problems. Overall, participants supported an increased use of alternatives to the criminal justice process.

CHALLENGE: Increasing demands on police services combined with limited budgets, require government and stakeholders to look at strategies other than prosecution under the *Criminal Code* to enhance community safety and make people feel secure in their neighborhoods. The provincial government has successfully moved in this direction by introducing several pieces of legislation which allow the provincial government and law

30 For example, the cities of Surrey and Abbotsford have implemented comprehensive crime reduction and community safety strategies. At the provincial level, the Ministry of Justice piloted a prolific offender management program in six communities throughout British Columbia.

31 Cowper, 2012, 22.

enforcement agencies to protect communities in ways that are both timely and cost effective. These legislative initiatives included: completing the provincial government's guns and gangs strategy by enacting laws that limit armored vehicle use; banning aftermarket compartments in vehicles; requiring health-care facilities to report gunshots; and implementing legislation to deter metal theft.

NEXT STEPS: The Ministry of Justice is continuing to work with communities and law enforcement to identify civil/administrative law strategies to address community safety issues. The most recent development is the introduction of the proposed *Community Safety Act* which will enable people to submit confidential complaints to a new provincial unit charged with investigating, mediating and working with property owners to curb various threatening and dangerous activities. This new unit will have powers to hold property owners accountable for unlawful activities on their properties, and to take steps to stop those activities. Those steps may include applying to the court for a community safety order to close a property to use and occupation for up to 90 days.

The proposed *Community Safety Act* targets properties that are used for unlawful activities such as drug trafficking, prostitution, illegal weapons, gang and organized crime, and other criminal activity. Problem properties contribute to an overall decline in public safety in the surrounding area resulting in frequent calls for police response. Problem properties also have a detrimental impact on adjacent property. The new legislation proposes a civil legal approach by allowing for court-ordered control of property. It will give people a simple, timely, safe way to report properties of concern without tying up court resources, and will force landlords to deal with chronic, illegal and dangerous behaviour on their properties. Implementation strategies are presently under consideration.

■ Support anti-gang initiatives

ACTION ITEM #9: The Ministry of Justice will, in collaboration with the Combined Forces Special Enforcement Unit and the Organized Crime Agency of British Columbia, conduct a review of anti-gang initiatives within the province and elsewhere to:

a. Identify potential further civil/administrative law strategies to complement existing enforcement efforts;

b. Enhance the coordination of anti-gang enforcement and disruption efforts between all police agencies through provincial policing standards; and,

c. Implement a province-wide anti-gang prevention campaign aimed at deterring at-risk youth from becoming involved in gangs.

CONSULTATION FINDINGS: Roundtable participants described the many ways gang activity affected their communities. They identified gangs as contributing to an overall sense of community instability, especially where youth and other vulnerable individuals are recruited to support gang activity. Participants noted that gangs often use intimidation or promises of money, as well as status and belonging in order to attract members. Communities in more remote or widespread regions noted that gangs are capitalizing on lower police presence. The need for strategies aimed at deterring youth from joining gangs and participating in the violence which accompanies the lifestyle was a key theme that emerged from the focus group.

CHALLENGE: There is a need to address gang recruitment and gang violence across the province through the development of new evidence-based approaches as well as by building on existing strategies. This involves strengthening the civil/administrative law and regulatory responses to complement enforcement efforts in the disruption and deterrence of gangs and organized crime. Past efforts have included the introduction of the *Gunshot and Stab Wound Disclosure Act, Armoured Vehicle and After-Market Compartment Control Act,* and the

Body Armour Control Act. The Ministry of Justice is involved in discussions at the federal, provincial and territorial level to identify strategic priorities related to combating organized crime.

In 2012, the provincial government renewed its support of initiatives focused on combating organized crime and gangs and guns by extending the funding of specialized units such as the Combined Forces Special Enforcement Unit – British Columbia (CFSEU-BC) and expanding their presence throughout the province.[32] To this end, the Provincial/National Threat Assessment (P/NTA) as well as the Provincial/Regional/Municipal/National Tactical Enforcement Priority are being utilized to achieve this goal.

NEXT STEPS: The Ministry of Justice commenced work in 2013 on the British Columbia Anti-Organized Crime and Gang Initiative Review Project which involves an environmental scan of existing anti-organized crime and gang initiatives within and outside of British Columbia, as well as extensive subject matter expert consultations. A final report is anticipated in 2014. In addition, the development of a series of CFSEU-BC anti-gang-themed posters, photos, and videos is currently underway to promote education and prevention around gangs, organized crime, and their effects on communities in British Columbia. Funding for the development and creation of a series of podcasts and video shorts has been approved and secured through to the end of 2014.

Multi-agency consultation and collaboration

ACTION ITEM #10: The Ministry of Justice will strike a cross-government Working Group to:

a. Review and examine existing cross-jurisdictional models of multi-agency collaboration and inter-sectoral service integration;

b. Review existing legislation and policies to identify gaps and barriers to information sharing among agencies; and,

c. Make recommendations to partners and stakeholders for the creation of policies and/or a framework to address gaps to information sharing and to improve integration and multi-agency collaboration on topics of mutual concern to the social services ministries and agencies.

CONSULTATION FINDINGS: Collaboration and coordination in justice, social and health services delivery was one of the main themes discussed at the roundtables and focus groups. Participants repeatedly singled out mental illness, addiction and domestic violence as issues that require special attention and coordination. They also felt that barriers to information sharing, such as privacy and liability concerns, should be addressed at a policy level so that information may be shared appropriately between diverse agencies that often interact with the same individuals. Focus group members agreed that multi-agency collaboration should be mandated to foster a culture of collaboration across sectors.

CHALLENGE: The *Cowper Report* discusses the importance of cross-sectoral responses to issues such as domestic violence and mental health to provide more efficient and effective responses.[33] The report also mentions that building integration would require a frank discussion among participants of how policies impact each other, cross-sector responsibilities and accountabilities, and how resources may best be shared accordingly.

32 Since 2009, CFSEU-BC, headquartered in Surrey, B.C., has expanded to include the Organized Crime Agency of British Columbia (OCABC), the Integrated Gang Task Force (Uniform Division, Firearms Enforcement Team, and Investigative Teams) and the restructured Outlaw Motorcycle Gang Enforcement Unit and Intelligence Unit. CFSEU-BC opened branch offices in Prince George covering all of Northern British Columbia, and in Kelowna covering southeast British Columbia which added to the already established district office in Victoria which services Vancouver Island.

33 Cowper, 2012.

NEXT STEPS: The Ministry of Justice will strike the Working Group in 2014 to review models of multi-agency collaboration in other provinces, and study the feasibility of adopting a similar model in British Columbia with a target completion date of March 2016. In consultation with the Information and Privacy Commissioner, the Ministry of Justice will also review existing legislation and policies to identify barriers to appropriate information sharing among agencies.

Theme #4 – Protect Vulnerable Persons: police and the provincial government are committed to protecting vulnerable persons

■ Support cultural awareness training

ACTION ITEM #11: The Ministry of Justice will ensure the development and delivery of cultural awareness and sensitivity training for all police officers in British Columbia, consistent with the recommendations in the *MWCI Report*.

CONSULTATION FINDINGS: Participants in the engagement process wanted police to put greater effort into establishing outreach to groups such as new immigrants, the Lesbian/Gay/Bisexual/Transgendered (LGBT) community, First Nations and marginalized community members. New police training should focus on key challenges such as mental health and intimate partner violence. They recommended increased intercultural connections and cultural sensitivity training not just for police but for civilian police employees as well.

CHALLENGE: In his *MWCI Report*, Commissioner Oppal envisions training that encompasses a mandatory suite of cultural awareness and sensitivity training courses for all police officers in British Columbia. He recommends that the training program include experiential and interactive training that can be adapted for police communications staff as required.[34]

The Ministry of Justice has reviewed the overall police training environment in British Columbia and has established a learning strategy for police to address issues of training standardization and quality. Previously, the ministry designed, developed and successfully implemented mandatory training programs that address some aspects of the *MWCI Report* recommendations pertaining to sensitivity and cultural awareness training.[35]

NEXT STEPS: The Ministry of Justice will review the current recruit and advanced training curriculum to ensure it incorporates the key values inherent in culturally sensitive policing with a target completion date of March 2014. In collaboration with key stakeholders, a review of present training and best practices related to cultural awareness and sensitivity training for police officers will be completed. Where gaps occur, the ministry will oversee the development of a suite of cultural awareness and sensitivity training courses for all police officers in British Columbia as part of its ongoing, multi-year review of police training.

■ Develop police-related strategies for persons in crisis with mental illness and/or addictions

ACTION ITEM #12: The Ministry of Justice will work with stakeholders to promote best practices and expand successful policing strategies such as integrated police/health initiatives across the province; and conduct a study to examine contact between police officers and persons with a mental illness and/or addictions to develop resource-efficient and effective strategies for these interactions.

34 Oppal, 2012, Vol. 3, 219.

35 For example, the provincial domestic violence training series for police in British Columbia addresses basic issues around investigating and assessing domestic violence risks to vulnerable women. The training features specific learning objectives addressing the vulnerabilities of women in circumstances of relative social powerlessness (i.e., isolation or marginalization factors such as addiction, poverty, disability, mental illness; Aboriginal, immigrant or refugee women; other social /cultural issues).

CONSULTATION FINDINGS: During the roundtable and focus group discussions, participants identified mental health and specifically police interaction with people with mental illness and/or addiction as a serious issue, and agreed on the need for greater supports for mental health and addictions. Core policing responsibilities are being stretched as a large proportion of calls involve mental health related issues. Participants did not think it was appropriate that local police were primarily responsible for responding to incidents involving those with mental health issues, but that it is happening more often because of an absence of sufficient supports beyond police. Over time, this is reducing police availability to deal with other public safety concerns and also leading to criminal justice interventions on individuals that participants felt would be better dealt with through appropriate health supports instead.

CHALLENGE: A number of police/mental health integrated initiatives such as VPD's Car 87, the RCMP's Car 67, Assertive Community Treatment (ACT), and Victoria Integrated Community Outreach Team (VICOT) have been successful in reaching out to people with a mental illness and/or addiction with the purpose of minimizing their involvement with the justice system.[36] In January of 2011, in response to recommendations made by Justice Braidwood in his report, *Restoring public confidence: Restricting the use of conducted energy weapons in British Columbia*[37], the Ministry of Justice launched police training on Crisis Intervention and De-escalation skills. The training develops the attitudes and communication skills required to ensure police are able to intervene effectively in a crisis situation. Despite the success of integrated initiatives and the implementation of mandatory training, challenges remain with respect to the impact of mental health related calls on police resources and the overall inadequacy of a justice system response to mental health calls.

NEXT STEPS: The Ministry of Justice, working with key stakeholders both inside and outside the provincial government, will promote and expand best practices and successful strategies across the province. Beginning in 2014, the ministry in partnership with the Ministry of Health, Health Authorities and police agencies, will examine the interfaces between mental health and substance use services in the criminal justice system, and develop a provincial overarching protocol for interactions and integrated services between police and mental health/substance use services.

■ Legal reforms to protect vulnerable and marginalized persons

ACTION ITEM #13: Consistent with the recommendations in the *MWCI Report*, the Ministry of Justice will evaluate possible missing persons legislation to grant speedy access to personal information of missing persons consistent with privacy laws, and evaluate a statutory provision on the legal duty to warn with a protocol on how it should be interpreted and applied.

36 Vancouver Police Department's Car 87 Mental Health Car teams a Vancouver police officer and a registered psychiatric nurse to work together in assessing, managing and deciding the most appropriate intervention for people with psychiatric problems (Vancouver Police Department, n.d.).

The RCMP's Car 67 program is a partnership between Surrey RCMP and the Fraser Health Association, and pairs a RCMP officer with a clinical nurse specializing in mental health work to respond to calls involving emotional and mental health issues and to provide assessments, crisis intervention and referrals to appropriate services (RCMP, n.d.)

The Assertive Community Treatment Team, including the Victoria Integrated Community Outreach Team, provides access to services in a community setting in Victoria for people who are suffering from mental illness or addictions. Team members include a psychiatrist, team leader, general practitioner, nurse practitioners, professional case managers, support workers, outreach worker, probation officer and a member of the Victoria Police Department (Vancouver Island Health Authority, 2010).

37 Braidwood, 2009.

MISSING PERSONS LEGISLATION

CHALLENGE: The *MWCI Report* highlights the need for strong support systems to assist police in initiating and conducting missing person investigations. Commissioner Oppal notes that barriers to collecting personal information pose challenges for police in initiating and conducting timely and effective investigations. Privacy legislation protects the personal information of a missing person in circumstances where no crime is suspected. The result is that missing person investigations can stall or halt, leaving families and friends frustrated and disillusioned with the efforts of police to locate their loved ones. Commissioner Oppal recommends that the provincial government enact missing persons legislation that balances privacy rights with the need for information required by police.

NEXT STEPS: The Ministry of Justice will analyze missing persons legislation in other jurisdictions and look for best practices and explore options for its applicability in British Columbia by the target date of March 2014.

LEGAL DUTY TO WARN

CHALLENGE: A key question addressed in the Missing Women Commission of Inquiry was whether police met their obligations to provide equal protection of the law to vulnerable and marginalized groups. Commissioner Oppal identifies what he considers to be gaps in the law with respect to protecting survival sex trade workers in the Downtown Eastside. He recommends that the provincial government consult with policing and community representatives to develop a legislative provision to give statutory recognition of the legal duty of police to provide warnings of potential threats to vulnerable and marginalized persons. Under existing law, police can and do give warnings to persons at risk, whether criminal or otherwise. The question raised by Commissioner Oppal was whether this is sufficient to protect marginalized and vulnerable persons.

NEXT STEPS: The Ministry of Justice will undertake further policy and legal work to explore provincial legislative options aimed at providing an enhanced, structured recognition of the police duty to warn and identify options for the provincial government to consider by the target date for completion of March 2015.

Theme #5 – Effective: police have modern tools, information and training to deliver effective policing services

Enhanced criminal intelligence

ACTION ITEM #14: Consistent with the recommendations in the *MWCI Report*, the Ministry of Justice will foster intelligence-led policing by supporting the implementation of a regional Real Time Intelligence Centre (RTIC) scalable to the province.

CHALLENGE: In his *MWCI Report*, Commissioner Oppal recognized the importance of making real time information accessible to law enforcement agencies to better respond to investigations such as the missing and murdered women cases. He recommended that the provincial government move expeditiously to complete its implementation.[38]

In 2010, the policing community identified a need for a real-time operations centre to provide an integrated multi-agency response to serious crime crossing jurisdictional boundaries. This has led to the development of the Real Time Intelligence Centre – British Columbia (RTIC-BC) mandated to provide actionable intelligence and real time operational support provincially across all jurisdictions in the province. The RTIC-BC will play an integral role in reviewing serious incidents for patterns and sharing information and coordinating investigations between jurisdictions.

38 Oppal, 2012, Vol. 3, 204.

NEXT STEPS: Working through the RCMP and in concert with the municipal police departments, the Ministry of Justice will support the creation of a RTIC-BC with a target date of completion of May 2014. Matters related to criminal intelligence enhancement will also be included in the development of standards under Action Item #7.

Performance management based on quality police data

ACTION ITEM #15: The Ministry of Justice will work with key stakeholders and academia to develop a performance management framework and enhance the quality and availability of police data in order to measure policing in a consistent manner across the province and support better performance management practices.

CONSULTATION FINDINGS: Roundtable participants asked for more appropriate, comparable measures for policing than are currently available and expressed a desire for consistent, clear performance measures for policing across the province. They identified problems with existing measures (for example, crime statistics do not reflect the administrative workload of a file; case burdens do not reflect demands such as travel time for police in remote areas). Discussions at the roundtables emphasized the need for provincial leadership in evaluating and measuring police performance. Focus group participants stressed the importance of stakeholder participation in developing the performance measures.

CHALLENGE: The Justice and Public Safety Council, appointed by the Minister of Justice, is committed to delivering the first annual *Justice and Public Safety Plan* by March 2014, including associated performance targets and measures as part of the plan. The development of sector-wide performance measures is an important and complex task, and the Council is undertaking this work in consultation with performance measurement experts from across the justice and public safety sector. The Ministry of Justice is also developing and implementing performance management and evaluation frameworks for use throughout the Ministry.

Police performance management requires the collection of data on general aspects of policing as well as results-oriented data. At present, a data set does not exist that can be used to measure key aspects of police performance across the province. For example, PRIME-BC is a records management database used by all police agencies in British Columbia; however, it was not specifically designed to measure performance. Similarly, other databases such as Computer Aided Dispatch (CAD) were not designed to gather data on police performance and vary significantly in the way that information is captured between police agencies.

NEXT STEPS: In 2013, the Ministry of Justice engaged Simon Fraser University's Institute for Canadian Urban Research Studies (ICURS) to conduct a study to identify the quality of available policing data and to develop performance indicators, with a target completion date of May 2014. The ministry will develop a performance management framework for policing in consultation with a committee of police, stakeholders and experts with a target date of March 2015. The framework will be informed by best practices and experiences in other jurisdictions.

Review *Police Act*

ACTION ITEM #16: The Ministry of Justice will conduct a comprehensive review of the *Police Act* to assess its relevancy to support the changing and complex environment of policing in British Columbia.

CHALLENGE: Since the *Police Act* was introduced in 1974, it has undergone numerous changes in response to emerging needs and issues. Recent developments include amendments in 2009 that improved the police complaint process in British Columbia and 2010 changes that allow the director of police services to set binding standards for policing. While these changes have improved accountability and coordination, further changes to the *Act* would address current and future challenges.

Potential amendments may include restructuring to: support community-based policing; provide more effective and flexible models for governance and police service delivery; and support collaborative approaches to crimes that cross jurisdictions.

NEXT STEPS: The Ministry of Justice, working with the police, community leaders and other key stakeholders will review the *Police Act*. The review will look at the challenges in the current legislative framework and build upon the successes of recent legislative changes. The review of the *Police Act* will be completed by 2015.

Conclusion

The *British Columbia Policing and Community Safety Plan* outlines a modernized policing and law enforcement framework for British Columbia. Although designed to guide reform over the next three, five and 10 years, the *Plan* will be a living document, reviewed every year by the Ministry of Justice through the ministry's annual planning and budget cycle, and will be changed and updated as needs emerge.

While many reforms were made during the past 15 years, policing in British Columbia continues to evolve. In the future, the legacy of those reforms will continue to influence the direction of policing in the province. In the immediate term, the present global fiscal challenges will have considerable impact on the speed and direction of reform.

Table 1: Summary of Action Items

THEME	ACTION ITEMS
Rational and Equitable: Policing is Structured, Governed and Funded in a Rational and Equitable Manner	**Enhance structure and funding options for policing** Action Item #1: The Ministry of Justice will work in collaboration and consultation with local governments, other key stakeholders and a committee of external experts to: Define and clarify policing responsibilities at the federal, provincial, and municipal government levels. Consider models of service delivery ranging from further integration to the regional delivery of services while retaining local community-focused policing. Develop options for funding/financing models that reflect each level of government's policing responsibility and distributes costs accordingly.
	Enhance the continuum of policing and public security options available Action Item #2: The Ministry of Justice will develop a public safety model including existing and new categories of law enforcement personnel to provide cost-effective services in support of policing.
	First Nations policing Action Item #3: In consultation with First Nations, police, the Ministry of Aboriginal Relations and Reconciliation, local governments and the federal government, the Ministry of Justice will reform the service delivery framework of the First Nations Policing Program in British Columbia.
Accountable: Police are Accountable to Civilian Authority	**Enhance community engagement** Action Item #4: In support of community-based policing, the Ministry of Justice will ensure that British Columbia communities have meaningful opportunities for significant input into local policing.
	Strengthen police board ability to effectively govern Action Item #5: The Ministry of Justice will review the current police board structure, function and training, and make enhancements and improvements where necessary.
	Support bias-free and equitable policing Action Item #6: The Ministry of Justice will conduct a study to examine the practices and policies of police agencies in British Columbia related to ensuring bias-free policing and will, where required, ensure that audits are completed related to bias-free policing and the equitable treatment of all persons.
	Develop provincial policing standards Action Item #7: The Ministry of Justice will continue developing provincial standards for police agencies in the province. Priority will be given to standards consistent with those recommended by Commissioner Oppal in the *MWCI Report* governing the investigation of missing persons, complex investigations involving serious crime and inter-agency cooperation.

THEME	ACTION ITEMS
Collaborative: Police, Governments and Communities Work Collaboratively to Meet Justice and Community Safety Goals	**Enhance community safety** Action Item #8: In support of enhancing community safety, the Ministry of Justice will work with stakeholders to develop strategies to: a. Support crime prevention efforts; b. Support province-led crime reduction initiatives; and, c. Support further development of civil/administrative law solutions.
	Support anti-gang initiatives Action Item #9: The Ministry of Justice will, in collaboration with the Combined Forces Special Enforcement Unit and the Organized Crime Agency of B.C., conduct a review of anti-gang initiatives within the province and elsewhere to: a. Identify potential further civil/administrative law strategies to complement existing enforcement efforts; b. Enhance the coordination of anti-gang enforcement and disruption efforts between all police agencies though provincial policing standards; and, c. Implement a province-wide anti-gang prevention campaign aimed at deterring at-risk youth from becoming involved in gangs.
	Multi-agency consultation and collaboration Action Item #10: The Ministry of Justice will strike a cross-government Working Group to: a. Review and examine existing cross-jurisdictional models of multi-agency collaboration and inter-sectoral service integration; b. Review existing legislation and policies to identify gaps and barriers to information sharing among agencies; and c. Make recommendations to partners and stakeholders for the creation of policies and/or a framework to address gaps to information sharing and to improve integration and multi-agency collaboration on topics of mutual concern to the social-services ministries and agencies.
Protection of vulnerable persons: Police and the Provincial Government are Committed to Protecting Vulnerable Persons	**Support cultural awareness training** Action Item #11: The Ministry of Justice will ensure the development and delivery of cultural awareness and sensitivity training for all police officers in British Columbia, consistent with the recommendations in the *MWCI Report*.
	Develop police-related strategies for persons in crisis with mental illness and/or addictions Action Item #12: The Ministry of Justice will work with stakeholders to promote best practices and expand successful policing strategies such as integrated police/health initiatives across the province; and conduct a study to examine contact between police officers and persons with a mental illness and/or addictions to develop resource-efficient and effective strategies for these interactions.
	Legal reforms to protect vulnerable and marginalized persons Action Item #13: Consistent with the recommendations in the *MWCI Report*, the Ministry of Justice will evaluate possible missing persons legislation to grant speedy access to personal information of missing persons consistent with privacy laws, and evaluate a statutory provision on the legal duty to warn with a protocol on how it should be interpreted and applied.

THEME	ACTION ITEMS
Effective: Police Have Modern Tools, Information and Training to Deliver Effective Policing Services	**Enhanced criminal intelligence** Action Item #14: Consistent with the recommendations in the *MWCI Report*, the Ministry of Justice will foster intelligence-led policing by supporting the implementation of a regional Real Time Intelligence Centre (RTIC) scalable to the province.
	Performance management based on quality police data Action Item #15: The Ministry of Justice will work with key stakeholders and academia to develop a performance management framework and enhance the quality and availability of police data in order to measure policing in a consistent manner across the province and support better performance management practices.
	Review Police Act Action Item #16: The Ministry of Justice will conduct a comprehensive review of the *Police Act* to assess its relevancy to support the changing and complex environment of policing in British Columbia.

Table 2: Status Update On Action Items (December 2013)

BRITISH COLUMBIA POLICING AND COMMUNITY SAFETY PLAN	STATUS UPDATE: DECEMBER 2013
Action Item #1: Enhance structure and funding options for policing	**IN PROGRESS** The Ministry of Justice is conducting a multi-year project to examine how policing is currently structured and funded. This project will look at better defining and clarifying policing responsibilities at all levels of government, and developing options for funding/financing that reflect each level of government's policing responsibility and distributes costs accordingly. To that end, the Ministry of Justice will create a Policing Structure and Funding Committee comprised of representatives from local governments and police agencies who will work together to better define federal, provincial and municipal policing responsibilities. This will lay the ground work for exploring new service delivery models and related funding and financing models while retaining local, community focused policing. In 2014, an Expert Committee comprised of business leaders, academics and members of the legal profession will be created to review the work of the Police Structure and Funding Committee and to make recommendations on the proposed models.
Action Item #2: Enhance the continuum of policing and public security options available	**UNDERWAY IN 2014**
Action Item #3: First Nations Policing	**IN PROGRESS** The *First Nations Policing Agreements* are currently being renegotiated with the Government of Canada. These new agreements will outline the cost share and budget to support First Nations policing in the province. It is anticipated that these agreements will be completed in March 2014.
Action Item #4: Enhance community engagement	**IN PROGRESS** Part of a long-term policing standards development process that is currently underway and will continue over the next number of years. Work on the specific topic of community engagement will be underway in 2015.
Action Item #5: Strengthen police board ability to effectively govern	**IN PROGRESS** Work commenced in 2013 on the review of police board structure, function, selection practices and training.
Action Item #6: Support bias-free and equitable policing	**UNDERWAY IN 2014**
Action Item #7: Develop provincial policing standards	**IN PROGRESS** The consultation process is underway through the Advisory Committee on Provincial Policing Standards (ACOPPS). Work is underway on the development of missing persons investigations standards, with expected completion in 2014.

BRITISH COLUMBIA POLICING AND COMMUNITY SAFETY PLAN	STATUS UPDATE: DECEMBER 2013
Action Item #8 (a): Enhance community safety through crime prevention strategies	**IN PROGRESS** Work is underway on the development of a crime prevention strategy. Further consultation has taken place with government and community stakeholders and a scan of crime prevention strategies and initiatives in other provinces is ongoing.
Action Item #8 (b): Enhance community safety through crime reduction initiatives	**IN PROGRESS** Work commenced in 2013 with the appointment of a blue-ribbon panel on crime reduction, led by Dr. Darryl Plecas, Parliamentary Secretary on Crime Reduction. This initiative will continue though 2015. Panel members will examine existing crime-reduction initiatives and research from other Canadian provinces and other countries as well as hold regional roundtable consultation sessions with stakeholders.
Action Item #8 (c): Civil/Administrative law strategies to enhance community safety	**IN PROGRESS** Options for implementation of the proposed *Community Safety Act* are under discussion.
Action Item #9: Support Anti-Gang initiatives	**IN PROGRESS** Work commenced in 2013 on the British Columbia Anti-Organized Crime and Gang Initiative Review Project. The research plan includes a literature review, internet review, provincial legislative inventory, and extensive subject matter expert consultations. Work also commenced on the development of a series of CFSEU-BC anti-gang-themed posters, photos and videos to promote education and prevention around gangs, organized crime, and their effects on communities in British Columbia. Funding for the development and creation of a series of podcasts and video shorts has been approved and secured through to the end of 2014. In June 2013, CFSEU-BC partnered with the RCMP Lower Mainland District to host a first-ever Sikh Summit on Gang Violence. A follow-up summit meeting was held in July and subsequent summits are being planned.
Action Item #10: Multi-agency consultation and collaboration	**UNDERWAY IN 2014**
Action Item #11: Support cultural awareness training	**IN PROGRESS** Work commenced in 2013 with a review of recruit training content and a scan of other training available across police agencies.
Action Item #12: Develop police-related strategies for persons in crisis with mental illness and/or addictions	**IN PROGRESS** Work commenced in 2013. The Ministry of Justice and the Ministry of Health are working together to examine the interfaces between mental health and substance use services in the criminal justice system. The project will identify best practice models/protocols within British Columbia and in other jurisdictions inside and outside Canada, and develop core recommended protocols, including information sharing that will influence better integrated approaches between police and health. The intent is to provide clear and practical guidance to police and mental health and substance use services on their respective roles and responsibilities when working together to respond to the needs of people with mental health and/or substance use problems who come into contact with police. As a result, people experiencing a mental health and/or substance use crisis will be recognized earlier, linked to appropriate health care services with the goal to reduce/eliminate their interaction with the criminal justice system.
Action Item #13: Legal reforms to protect vulnerable and marginalized persons	**IN PROGRESS** Work commenced in 2013 to analyze missing persons legislation in other jurisdictions and explore options for its applicability in British Columbia.
Action Item #14: Enhanced criminal intelligence	**IN PROGRESS** The Ministry of Justice will support the creation of the Real Time Intelligence Centre (RTIC-BC) with a target implementation date of May 2014.
Action Item #15: Performance management based on quality police data	**IN PROGRESS** In 2013 the Ministry of Justice engaged Simon Fraser University's Institute for Canadian Urban Research Studies (ICURS) to conduct a study to identify the quality of available policing data and to develop performance indicators, with a target completion date of May 2014.
Action item #16: Review the Police Act	**IN PROGRESS** The Ministry of Justice is currently working with the police, community leaders and other key stakeholders to review the *Police Act*, to be completed by 2015.

Table 3: Timelines

ACTION ITEM	2013	2014	2015	BEYOND 2015
Action Item #1: Enhance structure and funding options for policing				
Define and clarify policing responsibilities at the federal, provincial, and municipal government levels, with the participation of key stakeholders.	Work underway	Work ongoing	Estimated completion Fall 2015	
Consider models of service delivery ranging from further integration to the regional delivery of services while retaining local community-focused policing, with the assistance of an expert external committee.	Work underway	Work ongoing	Estimated completion Fall 2015	
Develop options for funding/financing models that reflect each level of government's policing responsibility and distribute costs accordingly.	Work underway	Work ongoing	Estimated completion Fall 2015	
Action Item #2: Enhance the continuum of policing and public security options available				
Conduct an in-depth review of similar models in other jurisdictions and a comprehensive review of law enforcement, private security and public safety groups.		Work underway	Work ongoing	Estimated completion March 2016
An enhanced framework for categories of law enforcement personnel which provide support to policing.				Estimated completion 2018
Action Item #3: First Nations policing				
First Nations policing agreement renegotiated with the Government of Canada	Work underway	Estimated completion March 2014		
Review the legal and constitutional aspects of providing policing on reserve lands.	Work underway	Estimated completion Fall 2014		
Develop a renewed strategy to deliver professional, culturally appropriate and accountable First Nations policing in British Columbia.	Work underway	Estimated completion Fall 2014		
Action Item #4: Enhance community engagement				
Develop policing standards that will require police agencies and/or police boards and committees to provide ongoing opportunities for community members and stakeholders to provide input about policing and law enforcement in their communities.			Work underway	Estimated completion March 2016
Action Item #5: Strengthen police board ability to effectively govern				
Review current board selection practices and work with the BCAPB and the JIBC to develop relevant courses to educate members about emerging issues in policing.	Work underway	Work ongoing	Estimated completion March 2015	
Action Item #6: Support bias-free & equitable policing				
Study the current practices and policies of police agencies related to ensuring bias-free policing.		Work underway	Estimated completion March 2015	
Ensure that appropriate audits are completed related to bias-free policing and the equitable treatment of all persons.				Estimated completion 2018
Develop policing standards that ensure bias-free policing.				Estimated completion 2018

ACTION ITEM	2013	2014	2015	BEYOND 2015
Action Item #7: Develop provincial policing standards				
Establish the Advisory Committee on Policing Standards to ensure that standards are developed in consultation with police and other stakeholders.	Work completed Fall 2013			
Complete the development of standards governing the investigation of missing persons, MCM and inter-agency cooperation and coordination.	Work underway	Work ongoing	Work ongoing	Estimated completion 2016
Action Item #8a: Crime Prevention				
Lead the development of a crime prevention strategy in B.C. taking into consideration key recommendations identified through consultation.	Work underway	Estimated completion March 2014		
Action Item #8b: Crime Reduction				
Support the implementation of an evidence-based, province-wide crime reduction initiative in consultation with the BCACP and with local governments.	Work underway	Work ongoing	Estimated completion March 2015	
Action Item #8c: Enhanced Community Safety				
Introduce the *Community Safety Act*.	Work underway	Work ongoing		
Continue to work with communities and law enforcement to identify civil/administrative law strategies to address community safety issues.	Work underway	Work ongoing	Work ongoing	Work ongoing
Action Item #9: Support anti-gang initiatives				
Through the CFSEU-BC, a province-wide anti-gang prevention campaign aimed at at-risk youth will be implemented.	Work underway	Estimated completion December 2014		
Review existing programs and legislation to identify opportunities to enhance the response to organized crime.	Work underway	Estimated completion December 2014		
Action Item #10: Multi-agency consultation and collaboration				
Review models of service integration and models of multi-agency collaboration in other provinces, and study the feasibility of adopting a similar model in British Columbia.		Work underway	Work ongoing	Estimated completion March 2016
In consultation with the Information and Privacy Commissioner review existing legislation and policies to identify barriers to appropriate information sharing among agencies.		Work underway	Work ongoing	Estimated completion March 2016
Action Item #11: Support cultural awareness training				
Review the current recruit and advanced training curriculum to ensure it incorporates the key values inherent in culturally sensitive policing.	Work underway	Estimated completion March 2014		
Where gaps occur, oversee the development of a suite of cultural awareness and sensitivity training courses for all police officers in British Columbia.			Work underway	Estimated completion March 2018
Action Item #12: Develop police-related strategies for persons in crisis with mental illness and/or addictions				
Work together with the Ministry of Health to examine the interfaces between mental health and substance use services in the criminal justice system.	Work underway	Estimated completion Fall 2014		
Action Item #13: Legal reforms to protect vulnerable and marginalized persons				
Analyze missing persons legislation and its application in other provinces and identify options for consideration.	Work underway	Estimated completion March 2014		

ACTION ITEM	2013	2014	2015	BEYOND 2015
Explore provincial legislative options aimed at providing an enhanced, structured recognition of the police duty to warn and identify options for the provincial government to consider.	Work underway	Estimated completion March 2014		
Action Item #14: Enhanced criminal intelligence				
Support the creation of a RTIC-BC.	Work underway	Estimated completion May 2014		
Action Item #15: Performance management based on quality police data				
Engage Simon Fraser University's ICURS to conduct a study to identify the quality of available policing data and to develop performance indicators.	Work underway	Estimated completion May 2014		
Develop a performance management framework for policing in consultation with stakeholders.		Work underway	Estimated completion March 2015	
Action Item #16: Review Police Act				
Review the *Police Act* to assess its relevancy to support the changing and complex environment of policing in British Columbia.	Work underway	Work ongoing	Estimated completion March 2015	

APPENDIX A: Community Consultation and Stakeholder Engagement in the Development of the British Columbia Policing and Community Safety Plan

Engagement activities

A unique feature of the development of the *British Columbia Policing and Community Safety Plan* is the level of community consultation and stakeholder engagement in the development process. Four specific engagement activities were undertaken:

■ Regional community and stakeholder roundtables

A series of regional stakeholder roundtables were held in nine locations around the province between April 2012 and June 2012. Participants included local government, First Nations representatives, community leaders, social service organizations and local police. Through facilitated discussions and small group break-out sessions, participants identified public safety issues, defined priorities and suggested potential solutions for shaping the future of policing and crime prevention in British Columbia.

■ Focus group meetings

Ten focus group meetings were held in September and October 2012 to discuss key issues that emerged from the roundtable sessions, and to develop strategies to address these issues. These focus groups included: gangs and guns, police funding, multi-agency collaboration and coordination of services, crime prevention, mental health, continuum of law enforcement, performance management of policing, and community engagement. Meetings were also held with First Nations with *Tripartite Agreements* and the RCMP Local Government Contract Management Committee.

■ Interactive website

An interactive website for public consultation and feedback was created. The blog was launched in May 2012 to report on the progress of the *Plan* and provide opportunities for public input. Summaries of the stakeholder roundtables were posted following each event, and questions inspired by the dialogue at the roundtables were posted so that others could join the conversation. A draft version of the *Plan* was posted in February 2013 for public and stakeholder feedback. The blog is closed.

■ Telephone survey

A telephone survey covering topics such as satisfaction with policing, perceptions of safety and personal experience with crime was conducted in June and July 2012. The survey was based on existing standardized survey instruments used in Canada and internationally. An external market research firm was contracted. A total of 2,400 surveys were completed, and weighted to represent population distributions for region, age and gender in British Columbia.

Key community challenges identified in the roundtable consultations

An important part of the roundtable process was giving participants the opportunity to discuss the challenges they were experiencing within their communities. For the most part, the challenges identified by the participants concerned either criminal activities and public safety concerns or broader, more universal societal or structural themes. By and large we learned that many communities have developed grassroots local networks for trying to reduce and prevent crime. Many participants also discussed the role of the provincial government both in providing sufficient funding for programs and systems as well as working diligently to coordinate justice, health, and social support services more closely.

Participants identifed a number of community challenges, including problems with specific criminal activities and other public safety issues. Participants also identified key regional differences that they believe present specific challenges:

■ Drug and alcohol addiction

Participants consistently identified a need for better resources to treat and address addictions. Many felt that drug and alcohol abuse are connected to, and drivers of many calls to police. The production, distribution and consumption of illicit drugs and alcohol contribute significantly to residents feeling unsafe in the community. Participants also talked about the role addiction plays in the cycle of crime, particularly with respect to family violence and property crime. Many participants wanted to see alternatives to holding impaired persons in local police cells (e.g., sobering centres).

■ Gang activity and drug trafficking

Participants told us how their communities were affected by gang activity in a number of different ways. They identified gangs as contributing to an overall sense of community instability, especially where youth and other vulnerable individuals are recruited to support gang activity. Participants noted that gangs often use intimidation or promises of money, status and belonging in order to attract members. Drug trafficking in general was noted as a consistent problem across the province, as was the illegal sale of alcohol and drugs into dry communities. Communities in more remote or widespread regions noted that gangs are capitalizing on lower police presence.

■ Mental health

Participants consistently identified the need for greater supports to address mental health, addiction and homelessness. Many discussed the impact of the closure of mental health facilities on already thin policing resources. In general participants felt it was unfair that local police were primarily responsible for responding to mental health related incidents that could be handled by other support systems. Many participants felt that these incidents were reducing police availability to deal with other public safety concerns. There were also concerns about the use of criminal justice interventions on participants who may be handled more appropriately through medical support.

■ Domestic violence

Violence in relationships and families was a prevalent matter of discussion among roundtable participants. Violence against women dominated the roundtable conversations, but violence against men, children and the elderly was also discussed. Participants talked about the complexity of trying to provide support and interventions for victims and their loved ones in light of the number of different agencies, all operating independently and with varying degrees of stability and capacity. While participants viewed demand as outpacing available

supports, they also talked about the need to eliminate overlap between agencies and utilize integrated case management in order to operate more effectively. Participants also discussed the need to develop new program areas when required (e.g., more programming for men).

Prostitution and human trafficking

Prostitution and human trafficking were often raised in discussions around drug and alcohol addiction, gang activity and violence against women. Participants noted the prevalence of prostitution in areas where drug use and trafficking is high. The problem was seen to be more acute in areas where the financial means to pay for both drugs and prostitution are high. Human trafficking was raised by many participants as an emerging issue, but little known criminal activity in communities.

Sexual abuse and sexual assault

In addition to violence in relationships, sexual abuse and sexual assault were frequently raised as issues. Many participants noted that often rural areas and small communities do not have access to the same resources and facilities for victims of sexual abuse as urban centres and larger communities.

Seniors' safety and potential elder abuse

In addition to elder abuse, participants raised the vulnerability of seniors as targets of crimes such as theft, fraud and home invasion. Participants also noted that seniors are the most likely residents to feel unsafe in their communities, especially where there are drugs, alcohol, unsupervised youth and seasonal population changes that affect public perception of safety.

Prolific offenders

Roundtable participants discussed the significant impact that prolific offenders have on communities (i.e., a small number of offenders can commit a large number of offences, usually to support an addiction). Some participants noted that while increased police supervision of prolific offenders is beneficial, it is not a substitute for programs that help offenders deal with the root causes of why they are involved in criminal activity.

Public disorder and personal safety

Many participants noted that communities are challenged to ensure public spaces are shared and respected rather than dominated and damaged. The behaviour of both individuals and large crowds were viewed by participants as affecting feelings of public safety. The most commonly noted negative behaviour included public intoxication, open drug use and prostitution. Participants noted that these activities can take over properties, neighbourhoods, or areas of the back country. Bush parties and seasonal recreational tourism were often identified as sources of potential public disorder and safety concerns.

Property crime

Property crime was commonly referenced by participants, particularly vandalism, graffiti, vehicle theft and theft from vehicles. Police and non-police participants alike agreed that these crimes affect a great number of people on a more personal and direct level than more serious and/or violent crimes. Timely response from police is expected; however, participants recognized that police response to property crimes takes away from other policing priorities, while at the same time, little police response impacts negatively on public confidence and satisfaction with policing.

Traffic and road safety

Dedicating sustained police resources to traffic enforcement was identified as critical to maintaining safe roads and public safety. Participants viewed road safety as an ongoing concern for communities and agreed that police should continue to focus on impaired driving, reckless driving, distracted driving, speeding and pedestrian safety.

Demographics

Participants discussed the impact of unique demographic patterns on community safety and noted that different demographic compositions can bring diverse criminal activities into focus. Areas with younger demographics have criminal activity more centered on drugs and prostitution while areas with larger elderly populations see more criminal activities like fraud, property crime and elder abuse. Some participants noted that another population factor that affects community safety is tourism and seasonal recreation. Community populations expand and contract by as much as three times their average size during busy tourist seasons; consequently, police near popular ski and lake resort areas can experience major peaks in demand which place considerable strain on community resources.

Economics

Many participants noted the impact that economic cycles have on the prevalence of crime and public safety issues as well the availability of resources to deal with those concerns. Economies reliant upon a natural resource operation or a dominant source of revenue have been impacted by the rise and fall of industry, creating a boom/bust environment. Participants expressed concerns that the increased wealth from industrial growth in small communities has come at a high price in terms of community health, as a consequence of activities such as drug use and prostitution. Some participants noted that this phenomenon is apparent in many communities in northern British Columbia whereas southern metropolitan areas with more diversified economies experience less impact. Participants also agreed that in communities where the economy is eroding, families become more unstable with an increase in the illicit drug business, drug and alcohol abuse, and family violence. Consequently, police and related community support services are stretched thinner by these demands.

Geography

Participants spoke about the distinctions between regions and rural versus urban communities, and how those factors impact on the prevalence or prominance of many of the criminal activity and public safety challenges identified in the previous section. Participants noted that large, urban communities have significantly more police and support resources than their rural counterparts. Rural communities require police to cover a much larger geographical area with small detachments and rural landscapes often present challenges that urban centres typically do not face. Participants discussed concerns about expectations in smaller communities where police are expected to cover more ground with fewer resources and offer the same range and quality of services as urban centres that have more community support services.

Key issues identified in the roundtable discussions

Policing

Overall, a key topic of discussion in many of the roundtable sessions was the desire of the participants to see the provincial government provide stronger leadership, better coordination of services, and alignment of funding with key public safety priorities.

Specifically, the topics identified with respect to policing issues fell into four broad themes:

ACCOUNTABILITY

- Police should build stronger relationships with communities
- The current community input structures into local police governance should be reviewed and strengthened
- Police performance should be adequately measured
- Police should manage communications more proactively
- Police require more specialized training with respect to contemporary policing issues

FUNDING

- A province-wide, equitable police funding formula should be developed
- Funding levels should be reflective of each level of government's responsibility

EFFECTIVE AND EFFICIENT POLICING

- Justice system reforms should be implemented in order to increase the effectiveness and efficiency of policing
- Sufficient resources should be allocated to social service agencies dealing with mental health, addiction and homelessness in order to relieve overburdened police
- Structural changes to police service delivery models should be considered to decrease police costs
- Innovative and sustainable management of police and civilian staff should be considered to decrease policing costs
- Strategies for reducing the administrative burden on police should be developed

COLLABORATION AND COORDINATION

- Greater collaboration is required between the justice system and related social and health systems in order to achieve true efficiencies and benefits
- Better coordination/consultation/communication is required between levels of government with respect to policing issues
- Mental health and addiction concerns require special attention from justice and social service providers
- A more coordinated response to domestic violence is required

Crime prevention

Participants expressed their interest in seeing the provincial government demonstrate stronger leadership through the development and implementation of a provincially-led crime prevention strategy. The identification of metrics and measures for effective, evidence-based crime prevention approaches along with the establishment of a clearing house and place for communities to share and explore best practices were identified as important features of the strategy.

Funding for crime prevention and for services to victims was also a key theme of discussion. Roundtable participants also explored the importance of local coordination, citizen engagement and the use of volunteers throughout roundtable discussions.

Specifically, discussions can be categorized into the following themes:

LEADERSHIP AND COORDINATION FOR CRIME PREVENTION

- A provincially-led crime prevention strategy should be developed and implemented
- Local resources are required to coordinate community-based crime prevention and crime reduction efforts

FUNDING

- Consistent, stable and long-term funding is required for victim services and crime prevention programs
- Community programs should be supported to maintain consistent availability of services

CITIZEN ENGAGEMENT

- Volunteers play an important role in addressing community health and safety issues and the coordination of volunteers should be enhanced
- Citizens have an important role to play in improving the safety of their communities and should be engaged

Key issues identified in the focus group discussions

As noted earlier, a series of focus group meetings were held in September and October 2012 to discuss key issues that emerged from the roundtable sessions, and to identify potential strategies.

Overall findings from the focus groups are as follows:

Gangs

Participants agreed that focusing resources on preventing youth from joining gangs is more effective than going after those who recruit youth into gangs. Developing prevention and intervention programs for youth and families, including providing youth with alternatives to the gang lifestyle is essential to addressing the recruitment into gangs.

Police funding

Participants agreed that discussions on police funding models must be preceded by a review of police functions and services to determine which ones are a provincial, municipal or federal responsibility. Provincial leadership is essential in mandating police responsibilities once determined, and in leading discussions around potential funding arrangements.

Multi-agency collaboration and coordination of services

The consensus was that to foster multi-agency collaboration, goals and priorities should be developed collaboratively by social services' ministries and agencies, and resources should be aligned according to goals and priorities developed. To improve collaboration, barriers to information sharing also need to be removed.

Crime prevention

Participants discussed the need for a provincially-led crime prevention strategy, including an implementation and community engagement strategy and accountability mechanisms. A central resource and distribution hub should be created to house and disseminate crime prevention support, training and resources.

Mental health

Participants supported the expansion and promotion of integrated initiatives such as Car 87/67, Assertive Community Treatment (ACT) and Victoria Integrated Community Outreach Team (VICOT) across the province which have proven to be successful in helping people with a mental illness and/or drug addiction. Improvements are still required to address the lack of housing and treatment options for people with a mental illness, limited emergency and outreach services, insufficient information sharing between police and health, as well as the stigma attached to dealing with people with a mental illness.

Continuum of law enforcement

Participants agreed that the full spectrum of law enforcement and public safety functions (special provincial constables, auxiliaries, by-law officers, private security) need to be examined in terms of their roles, mandates and standards. Standards, policies and accountability mechanisms should be reviewed across the public safety model to determine the most cost effective and strategic way to coordinate all law enforcement and public safety sectors.

Performance management of policing

Participants agreed that it would be valuable to develop a common set of performance indicators to measure policing across the province in a consistent manner. The process of developing performance measures should be informed by a clear understanding of the purpose of policing and a review of the literature and best practices with respect to performance measurement and policing.

Community engagement

There was agreement that communities should be given an opportunity to define their policing priorities and to provide input into how police services are delivered. Community engagement should be seen and valued as a means to an end, such as reducing crime and maintaining safe communities, and should be promoted accordingly through citizen advisory committees for example.

First Nations and policing

Participants agreed that communication and education are critical to building stronger relationships and establishing trust within the community. Multi-agency collaboration is essential to addressing community needs and First Nations agencies and representatives must be at the table and involved in discussions.

RCMP Local Government Contract Management Committee

Mayors agreed that policing responsibilities need be determined among municipal, provincial and federal government, and that alternate funding models need to be examined accordingly. There was consensus that a holistic approach to policing is required, and that sectors such as health, social services, education, policing and others should work together to address the complex social issues that are associated with crime.

Key findings from the public survey

Overall the results show that the public has greater confidence in the police than we are often led to believe. Specifically, four out of five British Columbians (or 79 per cent) had quite a lot or a great deal of confidence in their local police. Similarly, four out five British Columbians who had contact with a police officer in the past 12 months were satisfied with how police dealt with their matter. However, the level of confidence in police in general (rather than local police) was significantly lower at 69 per cent. Taken together the results speak to a substantial level of fundamental trust in our police, despite some negative publicity and events in recent years.

A number of different surveys have recently reported different results on confidence in policing in Canada and British Columbia. Survey results can vary substantially due to the sample size (number of people surveyed) as well the phrasing of the questions. This is why for our survey we ensured that the sample size was large (i.e. 2,400) in order to have robust results. By comparison, the most recent survey reported in the media in early January 2013, which found low levels of support for the RCMP in British Columbia, reportedly surveyed only 131 British Columbia residents (and only 1,021 Canadians overall).

Our survey did indicate, however, that there were some areas of police performance that could be improved – only 59 per cent of people said that the police did a good job of treating people fairly, and only 48 per cent of people said that police did a good job of supplying information to reduce crime.

When considering fear of crime, the results were overall also positive. The vast majority (94 per cent) of British Columbians were satisfied to varying degrees with their personal safety from crime. An overwhelming majority (96 per cent) felt safe when home alone in the evening and a somewhat lower majority (77 per cent) felt safe when walking alone after dark.

The crimes that were of concern to most survey respondents were having credit card details stolen and misused (72 per cent) and being in an accident caused by a drunk driver (68 per cent).

It is of concern that overall 17 per cent of British Columbians reported being a victim of at least one crime in the past 12 months, and that over one-third of these people did not report the crime. The most common reasons for not reporting a crime were that it was not important enough (which suggests a relatively minor crime) or that the police could not do anything about it. The lack of reporting is a concern as it means that official crime statistics do not provide the complete picture, and victims of crime may not receive the help that could have been provided had they reported the incident.

Significantly, this survey provides us with some important key measures that we can monitor and track over time.

Draft plan consultation feedback

Between February and September of 2013, stakeholders and the public were invited to review a draft of the *British Columbia Policing and Community Safety Plan* (the *Plan*) and submit feedback to the province.

Feedback was received from a variety of stakeholders and members of the public either through written submissions, emails, or blog posts. Generally speaking, feedback on the *Plan* was positive; however, many respondents were of the view that the draft *Plan* did not go far enough in proposing reforms for policing.

Other themes that emerged from the feedback included comments concerning the:

- Continuum of policing;
- Rising costs of policing and its relationship to the structure and funding of police services in the province;
- Interaction between mental health and policing; and,
- Crime prevention programs.

APPENDIX B: Milestones in the History of Policing in British Columbia

RCMP in British Columbia

In 1950, the Royal Canadian Mounted Police (RCMP) assumed provincial policing responsibilities in British Columbia. In accepting the provincial duties, the RCMP also assumed 46 municipal police contracts from the former British Columbia Provincial Police Force. These contracts formed the basis of large municipal agreements and laid the foundation for the unique police contract environment in the province.

The 1974 *Police Act* and the professional model of policing

In the early 1970s, British Columbia initiated a set of reforms in policing. The provincial government conducted the first major review of policing in British Columbia and, subsequently, the first provincial *Police Act* was passed in 1974. The *Act* embodied the model of policing that was prevalent at the time, the "professional model of policing". This model placed emphasis on the independence of police, a hierarchical rank structure, and centralized command. In keeping with the practice of other professions, the police were "self-regulated" in that they set their own standards of operation and conduct.

One of the purposes of the 1974 *Police Act* was to organize police services and to create mechanisms for governance and accountability. The *Act* established the British Columbia Police Commission (BCPC), as an independent body responsible for providing civilian oversight of police. The mandate of the BCPC was broad and included developing recommended provincial policing standards, conducting police audits, establishing training standards, conducting research and collecting statistics, as well investigating and adjudicating complaints against police officers.

Around this time, the British Columbia Police Academy was established to standardize training for municipal police department officers.

Women in policing

Reforms in the 1970s also led to more women being involved in policing, as well as increased opportunities for women in British Columbia's police forces. Women had been making contributions to the RCMP as early as the 1890s when the force employed females as matrons and gaolers to deal with female offenders. In the early 1900s women filled positions such as fingerprint technicians and lab technicians. In 1912, the Vancouver Police Department hired the first female police officers in Canada.

However, it was not until the 1970s that female police officers ceased to be selected according to different criteria from men, and to be assigned only to clerical support services or working with women and children. This change in practice was formalized in 1977, by the provisions of the *Canadian Human Rights Act* which disallowed discriminatory hiring practices. In the mid-1970s, the BCPC gave women the right to carry a firearm and to take on regular patrol duties. In 2011, 21 per cent of police officers in British Columbia were women.[39]

39 Statistics Canada (2011). *Police resources in Canada, 2011*. Catalogue no. 85-225-X. Ottawa, Ontario: Ministry of Industry Statistics Canada (p. 24).

The introduction of the First Nations Policing Policy

In the early 1990s, the federal government introduced the First Nations Policing Policy (FNPP). The policy provides First Nations communities with the option of developing and administering their own police service, or to have enhanced police services delivered by a contingent of First Nations officers working within an existing police force. The FNPP's purpose to is provide First Nations communities with police services that are culturally appropriate and accountable to the communities they serve. The FNPP is implemented through agreements negotiated among the federal government, provincial government and First Nations.

Commission of Inquiry into Policing in British Columbia – The *Oppal Report* (1994)

During the 1980s and early 1990s a number of high-profile police-involved serious incidents led the provincial government to appoint then-retired Justice Wallace T. Oppal to conduct a Commission of Inquiry into Policing in British Columbia (hereafter the *Oppal Report*). Justice Oppal was asked to address what changes should be made to policing in order to reflect the changes that had occurred in society and the challenges faced by police at that time. Justice Oppal's broad terms of reference touched on a range of issues related to policing and public safety. Integral to his review was a public consultation process.

The *Oppal Report* was released in September 1994. It detailed the challenges facing police agencies and made recommendations on how the provincial government should structure and manage policing. Justice Oppal found that although citizens were generally satisfied with police performance, they were also feeling increasingly isolated from their law enforcement agencies. Citizens in every part of the province wanted a closer working relationship with the police to solve community problems relating to crime and safety. In particular, the public wanted police to be involved in identifying and solving local crime problems through on-going cooperation and partnerships with the communities they served. Following the release of the *Oppal Report*, the provincial government formally endorsed the values and principles of a community-based policing model.

While the *Oppal Report* advocated the need for community policing to improve public safety and increase police accountability, Justice Oppal also recognized the need to strengthen accountability through governance and oversight mechanisms. In response to his recommendations, the provincial government made comprehensive amendments to the *Police Act*.

1998 *Police Act* amendments

In his 1994 report, Justice Oppal noted that the public complaints procedure and the police discipline system had created much concern and discussion in British Columbia. The public were demanding greater accountability from the police. Justice Oppal agreed that it was fundamental to the delivery of policing in British Columbia that there was a re-balancing of the relationship between police independence and the need for enhanced accountability.

At that time, the *Police Act* set out the procedures for receiving, investigating and adjudicating complaints against officers from municipal forces, while the *RCMP Act* set out the procedures for complaints against members of that force. With respect to municipal forces, the complaint procedure was the responsibility of the British Columbia Police Commission. As a result, the procedures were left largely in the control of the police, as they conducted the investigations with respect to complaints, made the decisions, and imposed any sanctions deemed necessary.

Justice Oppal concluded that there was a compelling need in British Columbia for strong, independent civilian oversight of the police. As well, he recommended that there should be one process for complaints against all police officers. He recommended the establishment of an office of a complaint commissioner operating at the level of an ombudsperson who would have the complete authority to oversee all investigations, which would be conducted by the police.

In response to these conclusions and other *Oppal Report* recommendations, significant amendments were made to the *Police Act* to strengthen the oversight and governance of policing in British Columbia. These amendments took effect in 1998. The amendments dissolved the British Columbia Police Commission and established the Office of the Police Complaint Commissioner (OPCC), which was vested with the British Columbia Police Commission's police complaints function. These amendments resulted in a police complaint model that gave police the responsibilities for investigating complaints, and imposing disciplinary or corrective measures for misconduct, while providing for independent civilian authority to oversee the discharge of those responsibilities.

The 1998 amendments also established the statutory role of the director of police services and assigned broad powers to the director. The director was given overall responsibility to superintend policing and law enforcement functions. With the exception of public complaints, the director became responsible for all former functions of the British Columbia Police Commission, including audits, policing standards, research and statistics.

Technological advances

The establishment of E-Comm 911[40]

By the early 1990s a series of international disasters, including an earthquake in San Francisco, drew attention to the importance of having effective and coordinated communications between emergency personnel when disaster strikes. At the time, in the Lower Mainland, outdated radio systems needed replacement. Emergency radio services were fragmented, as ambulance, fire and police agencies were all using separate radio systems. During the 1994 Stanley Cup Riot the Vancouver police radio system was unable to handle the amount of radio traffic. Police, firefighters and paramedics were endangered because their radio systems were not compatible and they could not effectively communicate with one another.

The provincial government, RCMP and the Vancouver Police Department worked together to implement an integrated wide-area radio system to replace the existing communications system. The result was the E-Comm 911 Wide-Area Radio Network, a shared communications system used throughout Metro Vancouver, by police, fire and ambulance personnel. Today, the E-Comm radio system provides service to police, fire and ambulance in southwest British Columbia. Its multi-agency, multi-jurisdictional capabilities have played a critical role in better assisting police as they serve British Columbians. A similar organization, the Capital Region Emergency Services Telecommunication (CREST) delivers wide area radio to the Capital Regional District.

The implementation of PRIME-BC

In the late 1990s, police agencies in the province used records management systems that were not capable of providing comprehensive information necessary for problem-oriented and community policing. In order to effectively investigate complex criminal activity across jurisdictions, police required a more sophisticated records management system.

40 Emergency Communications for Southwest British Columbia Incorporated

British Columbia was the first jurisdiction in the country to implement a province-wide, electronic records management system that provides interoperability among all policing agencies in the province. In May 1998, the British Columbia Association of Chiefs of Police adopted the vision of a common information system for the province. The RCMP "E" Division, municipal police agencies and the provincial government partnered in the acquisition and implementation of a common information system, called Police Records Information Management Environment for British Columbia, or PRIME-BC with the provincial government contributing some $40 million dollars to its development. The system included the conversion from a paper-based records environment to an electronic environment allowing for the real-time, multi-jurisdictional and multi-agency sharing of critical information. In February 2003, the provincial government passed legislation to ensure all police forces in British Columbia used the common information system to enhance public safety and improve law enforcement across the province.

The Wood Review[41]

The concept of civilian oversight of police conduct continued to evolve and its practice to be scrutinized. In the five years that followed the establishment of the Office of the Police Complaint Commissioner (OPCC), a number of concerns were raised about the efficacy of the legislation from key stakeholders. Also during those years, a number of high profile police incidents occurred that drew questions from the public about the process for handling complaints against the police. In 2003, the PIVOT Legal Society formally submitted 50 complaints to the police complaint commissioner on the behalf of several marginalized residents in Vancouver's Downtown Eastside.

In 2005, the provincial government appointed Justice Josiah Wood to lead a review of the police complaint process as set out in Part 9 of the 1998 *Police Act*. As part of the review, Justice Wood also examined the integrity of the system and the confidence of stakeholders in the conduct of the police complaints investigations by municipal police departments.

An audit of 294 complaint files was undertaken as part of the review. Justice Wood found that while the majority of complaints against the police were properly investigated and appropriately handled, one in five complaints were not handled or concluded as well as they could be. Justice Wood was concerned that some of the more serious complaints tended to be the ones that had deficiencies, either in the investigation or the disposition.

Justice Wood made more than 90 recommendations designed to address current problems and streamline and improve the legislative framework. In response to these recommendations, the police complaints process was modified through changes made to the *Police Act* in 2009. The changes aimed to strengthen the oversight powers of the OPCC. The intent of the changes also focused on accessibility for the public to file complaints against municipal police regarding officer conduct, for investigators to process these complaints more thoroughly, and for the police complaint commissioner to contemporaneously oversee the entire process to ensure a higher degree of public confidence in the results.

41 Wood, J. (2007). *Report on the review of the police complaints process in British Columbia*. Victoria, BC: Ministry of Public Safety and Solicitor General.

The death of Robert Dziekanski and the resulting Braidwood Commission of Inquiry

On October 14, 2007, Mr. Robert Dziekanski died at the Vancouver International Airport after a conducted energy weapon (CEW or commonly known as a taser) was deployed against him. The incident was captured on video and prompted immediate and intense national and international public reaction.

In February 2008, the provincial government appointed Justice Thomas Braidwood, Q.C., to conduct two separate public inquiries into the death of Mr. Dziekanski: 1) a study commission to inquire into and report on the use of CEWs in British Columbia; and, 2) a hearing and study commission to inquire into and report on the death of Robert Dziekanski.

Study Commission Report[42]

Justice Braidwood's first report was released on July 23, 2009. Justice Braidwood concluded that CEWs are a valuable tool for law enforcement officers in British Columbia, but that their use must be more closely regulated. He emphasized that, in a system of responsible government, the police must be accountable to civilian authority. The civilian authority in this context, the provincial government, has a duty to set policy and standards on important issues such as CEW use, and police have a duty to operate in accordance with such standards. Justice Braidwood made 19 recommendations that encompassed the development of provincial policing standards governing CEWs; enhanced reporting of CEW use; and required mandatory, standardized training in crisis intervention and CEW use. The provincial government accepted all of the recommendations and began a substantive implementation project.

One of the provincial government's first actions was to amend the *Police Act* to provide the director of police services with the explicit authority to set binding standards for policing. The provincial government then created provincial policing standards governing how and when CEWs could be used by police in British Columbia, which address all of Justice Braidwood's 19 recommendations. These standards were announced by the provincial government in December 2011.

Hearing and Study Commission Report[43]

While Justice Braidwood's first report focused on the use of CEWs in British Columbia, and the provincial government's role in setting law or policy for their use, the second report examined the circumstances around Mr. Dziekanski's death. The Dziekanski case was an example of the police investigating themselves. Critics argued that such an investigative system allowed for the actual or perceived conflict of interest which could lead to public distrust and an undermining of public confidence in investigations of this nature and ultimately in the police themselves.

42 Braidwood, T. R. (2009). *Restoring public confidence: Restricting the use of conducted energy weapons in British Columbia*. Victoria, BC: Braidwood Commission on Conducted Energy Weapon Use.

43 Braidwood, T. R. (2010). *Why? The Robert Dziekanski tragedy*. Victoria, BC: Braidwood Commission on the Death of Robert Dziekanski.

Justice William H. Davies, Q.C. undertook a detailed review of the issue of police investigating themselves, during the Inquiry into the death of Frank Paul.[44,45] Justice Davies recommended that British Columbia establish a civilian-based model for the investigation of police-related deaths. Justice Braidwood agreed with Justice Davies' recommendation. This was the primary recommendation with respect to policing in Justice Braidwood's second report, released in May 2010. The provincial government accepted this recommendation and created the new Independent Investigations Office (IIO). The IIO became operational in September 2012.

Road safety enforcement

Traffic enforcement in British Columbia has benefited from a unique partnership with the Insurance Corporation of British Columbia (ICBC) for 35 years. For several decades, ICBC directly contributed overtime funds to police to deliver additional targeted corridor enforcement and CounterAttack drinking driving campaigns, as well as automated enforcement.

In 2003, the provincial government and ICBC formalized the arrangement by developing a unique integrated team model to support the ongoing delivery of enhanced traffic enforcement. Through a Memorandum of Understanding with ICBC, Policing and Security Branch now oversees an annual program and budget that supports over 150 specialized municipal and provincial traffic officers working in integrated teams across jurisdictional boundaries, delivering targeted traffic enforcement and auto crime enforcement as an enhancement to regular traffic services. These funds are topped up by an additional 30 per cent under the federal contract and now represent approximately $30 million in additional traffic and auto crime enforcement each year. This arrangement supports Integrated Road Safety Units (IRSUs), Integrated Municipal Provincial Auto Crime Team (IMPACT) and BaitCar auto crime enforcement, as well as CounterAttack and other targeted enforcement campaigns. This additional investment in enhanced road safety is unique to British Columbia and has contributed to unprecedented reductions in traffic fatalities and auto crime in the past seven years.

In 2011, the provincial red light camera program was expanded to 140 of the province's most dangerous intersections and upgraded to utilize digital imaging technology, remote data transfer and automated processing, reducing operational costs and dramatically improving the efficiency of this front-line enforcement program.

44 Davies, W. H. (2009). *Alone and cold: The Davies Commission Inquiry into the death of Frank Paul*. Victoria, BC: The Davies Commission Inquiry into the Death of Frank Paul.

Davies, W. H. (2011). *Alone and cold: The Davies Commission Inquiry into the response of the criminal justice branch*. Victoria, BC: The Davies Commission Inquiry into the Response of the Criminal Justice Branch.

45 Frank Paul died of hypothermia due to or as a consequence of acute alcohol intoxication in the overnight hours of December 5-6, 1998. Earlier that evening, he had been removed from the Vancouver Police Department lockup and left in a nearby alley by a police officer, where his body was later found. In 2007 the provincial government appointed Justice Davies to lead an independent commission of inquiry into the circumstances surrounding Mr. Paul's death, and the responses to his death by specific public bodies including the Vancouver Police Department and the OPCC. The terms of reference also included examining the rules, policies, and procedures governing similar circumstances (i.e., interactions between specific public bodies and persons incapacitated by alcohol or drugs and deaths caused by similar circumstances) and the relevant services available. The Davies Commission of Inquiry produced two reports in 2009 and 2011.

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List of Acronyms

ACT	Assertive Community Treatment
BCACP	British Columbia Association of Chiefs of Police
BCAPB	British Columbia Association of Police Boards
BCPC	British Columbia Police Commission
CAD	Computer Aided Dispatch
CCA	Council of Canadian Academies
CCSO Crim	Coordinating Committee of Senior Officials-Criminal
CEW	Conducted energy weapon
CFSEU	Combined Forces Special Enforcement Unit
CID	Crisis Intervention and De-escalation
CIROC	Canadian Integrated Response to Organized Crime
CMC	Contract Management Committee
CPC	Commission for Public Complaints
CRCC	Civilian Review and Complaints Commission
CREST	Capital Region Emergency Services Telecommunication
CSCP	Community Safety and Crime Prevention Branch
CTA	Community Tripartite Agreements
CUFIC	Certified Use of Force Instructor Course
DTES	Downtown Eastside
E-COMM	Emergency Communications for Southwest British Columbia Incorporated
FNAPS	First Nations Administered Police Services
FNCPS	First Nations Community Policing Services
FNPP	First Nations Policing Policy
FPT	Federal Provincial Territorial
IBET	Integrated Border Enforcement Team
ICBC	Insurance Corporation of British Columbia
ICE	Integrated Child Exploitation Team
ICURS	Institute for Canadian Urban Research Studies
IHIT	Integrated Homicide Investigation Team
IIO	Independent Investigations Office
IMET	Integrated Coordinated Market Enforcement Team
IMPACT	Integrated Municipal Provincial Auto Crime Team
IRSUs	Integrated Road Safety Units

ISPOT	Integrated Sexual Predator Observation Team
JIBC	Justice Institute of British Columbia
JIBC PA	Justice Institute of British Columbia Police Academy
LGCMC	Local Government Contract Management Committee
LGBT	Lesbian/Gay/Bi-sexual/Transgendered
MCM	Major Case Management
MPSA	Municipal Police Service Agreement
MPUA	Municipal Police Unit Agreement
MWCI	Missing Women Commission of Inquiry
NCC	National Coordinating Committee on Organized Crime
OCABC	Organized Crime Agency British Columbia
OPCC	Office of the Police Complaint Commissioner
PACC	Police Academy Chiefs Committee
P/NTA	Provincial/National Threat Assessment
PODV	Provincial Office of Domestic Violence
PPLS	Police Provincial Learning Strategy
PPSA	Provincial Police Service Agreement
PRCC	Pacific Regional Coordinating Committee on Organized Crime
PRIME-BC	Police Records Information Management Environment for British Columbia
PSB	Policing and Security Branch
PTEP	Provincial Tactical Enforcement Priority
RCMP	Royal Canadian Mounted Police
RCMP ERT	RCMP Emergency Response Team
RTIC	Real Time Intelligence Centre
SCBCTAPS	South Coast British Columbia Transit Authority Police Service
SPC	Special Provincial Constable
VAWIR	Violence Against Women in Relationships
VICOT	Victoria Integrated Community Outreach Team

Appendix IV

Getting Serious About Crime Reduction

REPORT *of the* BLUE RIBBON PANEL *on* CRIME REDUCTION

BRITISH COLUMBIA

CHAIR: *Darryl Plecas, MLA*
Parliamentary Secretary for Crime Reduction
Ministry of Justice, Province of British Columbia

MEMBERS *of the* PANEL
Gary Bass, Geri Bemister, Beverly Busson,
Yvon Dandurand, Jean T. Fournier

Contents

TO: THE HONOURABLE SUZANNE ANTON,
Attorney General and Minister of Justice

I am pleased to present the report of the Blue Ribbon Panel on Crime Reduction for consideration by the government. As instructed, the Panel consulted extensively with stakeholders across the province, reviewed existing crime reduction activities and identified their strengths as well as potential gaps, challenges and issues. Many exciting opportunities for effective evidence-led crime reduction initiatives were identified.

The consultation process generated a lot of interest. Stakeholders were proud of the various crime reduction initiatives taken locally and eager to share their experience. Many concrete suggestions were made which we have tried to reflect in the report. However, a lot of frustration was also expressed about the absence of a comprehensive crime reduction strategy and the difficulties encountered in fostering genuine and sustained collaboration among the various agencies and sectors involved. I sincerely wish to thank all individuals and groups who participated in our consultation or presented written submissions.

Because crime reduction is a fundamental objective of the public safety and justice sector as a whole, our recommendations are broad and far-reaching. We have right now a great opportunity to build on the strengths of existing programs, integrate crime prevention and reduction approaches at various levels, engage local communities and their leaders, and produce measurable public safety outcomes.

Taking into account the concerns raised and suggestions made during the consultations, as well as the evidence available on crime reduction approaches, the Panel makes six recommendations, not only to reduce crime, but also to minimize its impacts on citizens and communities. These include a comprehensive, evidence-based model for dealing with prolific and priority offenders across the justice and public safety sector in sentencing, managing, rehabilitating, supervising and supporting them to change their behaviour, desist from crime and successfully reintegrate with society.

I appreciated the opportunity to work with the distinguished Panel members and lead a process that has engaged so many British Columbians. I believe that the Panel's recommendations are based on the best evidence available and current knowledge of effective approaches to crime reduction.

I want to thank the Panel members for volunteering their time, and for their unfaltering commitment to this project. Their contribution was truly outstanding. I would also like to express my deep appreciation to the dedicated staff of the Policing & Security Programs Branch, in particular Clayton Pecknold, Assistant Deputy Minister; Shabnem Afzal, Crime Reduction Project Lead; Justine Herman, Program Assistant and Dominique Leclair, Administrative Assistant, who supported our work, along with the research staff of the Corrections Branch. I am also very grateful for the research and other support provided by Jordan Diplock who was seconded to the Panel by the RCMP "E" Division.

Together we have developed a plan for driving B.C.'s crime rate lower – and achieving better outcomes for the tax dollars spent across the justice and public safety system.

Respectfully submitted,

DARRYL PLECAS
Parliamentary Secretary for Crime Reduction

Getting Serious About Reducing Crime: *Report of the Blue Ribbon Panel*

Introduction

In the last decade, British Columbia's crime rate has fallen dramatically. And while this is consistent with wider trends, the drop has been steeper here than anywhere else in North America. Countless individuals and organizations have played a role in driving down crime. But perhaps the single greatest contribution has come from police – who, faced with a spike in gang-related crime in the early 2000s, made a fundamental change in the way they do their work. Instead of focusing primarily on crimes, they focused on offenders. And the outcomes speak for themselves.

In some jurisdictions, such as Abbotsford and Burnaby, crime rates have fallen by more than 50 per cent and it's clear that crime reduction initiatives have made a difference. This points the way to a new approach for our justice system overall, especially in a time of fiscal restraint. Simply put, all partners in the criminal justice system need to put the focus on offenders at every level – from primary prevention activities to improved offender management – in an integrated, coordinated way. This is the key to bringing B.C.'s crime rate down even further and, at the same time, improving efficiency to make sure we get the best results from every dollar invested.

Background

In February 2012, the B.C. government launched the Justice Reform Initiative to identify actions that government, the judiciary, the legal profession, police and others can take to give British Columbians more timely and effective justice services. The ministries of attorney general and solicitor general were merged in a new Ministry of Justice. And Geoffrey Cowper, QC - one of Canada's most respected litigators – was appointed to identify long-term, fiscally responsible solutions that improve outcomes and accountability.

Cowper's report, *A Criminal Justice System for the 21st Century*, recommended a broad suite of changes, including the development of a province-wide crime reduction plan. Crime reduction is also singled out as a priority in the Province's *White Paper Part Two: A Timely and Balanced Justice System*, as well as in the B.C. *Policing and Community Safety Pla*n.

In June 2013, Abbotsford South MLA Darryl Plecas was appointed to the new role of Parliamentary Secretary for Crime Reduction, drawing on his 34 years as a criminologist and researcher. In September 2013, Plecas convened a Blue-Ribbon Panel of experts to study crime reduction opportunities and recommend ways to drive B.C.'s record-low crime rate down even further recognizing the broad range of strategies and actions already underway. For the Panel's terms of reference, see Appendix A.

About the Panel

Chaired by Parliamentary Secretary Plecas, the Blue-Ribbon Panel on Crime Reduction had five members:

- Jean Fournier, a former federal deputy solicitor general who has just finished his third and final term on the board of the Canadian Centre on Substance Abuse
- Yvon Dandurand, a professor at the School of Criminology and Criminal Justice, University of the Fraser Valley, and a fellow and senior associate of the International Centre for Criminal Law Reform and Criminal Justice Policy
- Geri Ellen Bemister, an expert on substance abuse issues who teaches criminology at North Island College in Courtenay
- Beverley Busson, the first female commissioner of the RCMP and former commanding officer for British Columbia
- Gary Bass, a former commanding officer of the RCMP in British Columbia and senior research fellow with the Institute for Canadian Urban Research Studies in the Simon Fraser University School of Criminology.

For detailed biographies of Panel members, see Appendix B.

What the Panel Heard

Between September 2013 and March 2014, the Panel conducted an exhaustive consultation process, meeting with the broadest range of stakeholders imaginable. We held roundtable meetings in Abbotsford, Campbell River, Cranbrook, Fort St. John, Kamloops, Kelowna, Maple Ridge, Nanaimo, Prince George, Prince Rupert, Surrey, Vancouver, Victoria and Williams Lake; received 36 written submissions; and met with more than 600 individuals – including judges, prosecutors, defense lawyers, police, front-line service providers, local elected officials, First Nations leaders, prolific offenders and people in treatment for addictions.

The Panel's consultations made it clear that a wealth of experience exists in our communities, where local leaders are implementing innovative crime reduction initiatives tailored to their own specific needs and priorities. Every community expressed a determination to take action; a growing realization that crime reduction is not only a law enforcement problem and a high level of consensus about what needs to be done. We also heard unanimous support for an integrated province-wide approach; otherwise, we risk displacing crime from one community to another.[1]

While it is impossible to do justice here to all the suggestions and recommendations we heard, the following summary highlights the themes most immediately relevant to the Panel's terms of reference. For a more complete summary of what the Panel heard, see Appendix C.

1 Other consultations across the province also confirm that there is a need to ensure that those crime reduction efforts are coordinated and crime is not displaced to other communities, *British Columbia Policing and Community Safety Plan*, p. 34.

Focusing on offenders

The Panel heard a strong consensus that significant reductions in crime can be achieved by focusing on prolific offenders – the very small proportion of the total population that's responsible for most of the crime in B.C. These individuals have been in and out of the provincial corrections system for years, committing crimes over and over again, in spite of their experience with the justice system. According to BC Corrections, more than two thirds of offenders in the system in 2012 were repeat customers; 40 per cent had 10 or more convictions, and five per cent had 24 or more convictions over 10 years.

The Panel heard support for the Province's recently-completed Prolific Offender Management pilot project, along with a number of concrete suggestions for improving approaches to incarceration and sentencing.

More broadly, the Panel heard that shifting the focus from crimes to offenders has been fundamental to B.C.'s success in driving down the crime rate in the past 10 years. Experience in other jurisdictions suggests that this approach could generate even more impressive results if adopted across the B.C. justice system.

Alternatives to incarceration

The Panel heard strong support for effective diversion mechanisms and, in particular, greater use of the restorative justice approach; this was reiterated at nearly every roundtable meeting. Successful programs are in place in a number of communities. However, many stakeholders said that the quality of programs across the province varies and could be improved with, for example, provincial standards.

Support was often expressed for establishing problem-solving courts (drug courts, community courts, family violence courts, etc.). There were many views about what these courts could actually accomplish or the desirability of establishing them in various parts of the province. It was clear that many stakeholders were attracted by the model because of its apparent promise to "resolve problems" in a more effective and efficient way than the regular justice system.

Corrections officials frequently indicated that many of the inmates in custody should be receiving treatment instead of a custodial sentence. We also heard concerns about inadequate supervision of offenders in the community under court-ordered conditions. Stakeholders generally supported the idea of improving current community supervision programs and finding ways to deal more effectively with situations where court-imposed conditions are breached.

Support was expressed for making greater use of surveillance technology to enforce court orders and protect victims, including electronic monitoring of offenders in domestic violence cases. Some stakeholders said that the role and functions of B.C. probation officers should be reconsidered with an eye towards reducing administrative duties in favour of spending more time one-on-one with offenders.

Addictions and mental illness

Many of those who presented to the Panel noted the link between crime rates and the unaddressed addiction issues of chronic offenders. Some said we need to place a greater emphasis on providing recovery services, and presenters were virtually unanimous in citing a shortage of effective drug and alcohol addiction treatment and recovery programs. In some communities, people expressed concern about unlicensed and "predatory" so-called recovery homes, which operate outside the health-care and justice systems, often providing little more than housing.

Another key concern was the lack of local access to services for people with mental illness, and for those with both addictions and mental illness. Police told the Panel that, on average, one in five calls for service they receive relates to unaddressed mental health issues. Along with consuming police resources, this situation is unhelpful for those in need of services from qualified health professionals. As noted in a recent House of Commons report on the economics of policing, front-line police officers are not the best equipped to deal with mental health problems.

Inter-agency collaboration

Time and time again, the Panel heard from people who were frustrated by the lack of collaboration among those leading crime reduction efforts. While many presenters were proud of the results they saw in their communities, there was frequent mention of disjointed approaches, fragmented interventions, and the propensity of many professionals to work in "silos" isolated from each other. Many stakeholders advocated for a "whole of government" approach to crime reduction with related measures to hold local managers accountable for their agencies' performance.

Domestic violence

Domestic violence and sexual violence against women and children were consistently mentioned as an urgent priority. Many of those who spoke to the Panel expressed great concern about the number of violent crimes against children and women that go unreported and unaddressed. Stakeholders also commented on the success of existing initiatives, including the Domestic Violence Unit (DVU) and the Interagency Case Assessment Team (ICAT).

First Nations communities

The Panel heard concerns about the over-representation of First Nations peoples in the criminal justice system and the need for comprehensive, community based, culturally sensitive and effective interventions. Many First Nations draw on their healing programs to address crime and reintegrate community members involved with the justice system. The role of native court workers and the progress made in implementing First Nations Courts and Elders' Justice Councils were frequently noted as important steps forward.

Rapid economic development

Many stakeholders voiced concern about the rapid development of large natural-resource projects in northern communities, such as Fort St. John. The Panel heard that local law enforcement and community resources are clearly insufficient to deal with the large influx of workers and related public disorder and crime issues. There were some suggestions that, as the Province moves forward with intensified resource development, planning should account for the increased pressures on police and other public resources.

Prevention

Many stakeholders emphasized the need for early and timely interventions and prevention programs for at-risk children and youth, including those whose parents are in conflict with the law, incarcerated or struggling with addiction, as well as those who themselves experience mental illness, fetal alcohol spectrum disorder, attention deficit hyperactivity disorders and substance abuse disorders. Stakeholders generally agreed that prevention programs are a sound and necessary investment, even if their immediate impact on crime is not always noticeable.

Many also spoke of the need for early intervention with offenders and potential offenders, recognizing that crime can be prevented by responding as early as possible when people have risk factors such as addiction, loss of employment or mental illness.

Funding

Issues related to funding were mentioned frequently in the Panel's consultations. Presenters were most concerned about funding for community-based crime reduction programs and for the non-profit organizations whose work is often crucial. Some raised concerns about continuity as well. For example, the Panel heard of cases where pilot projects had good results, but could not be built upon due to lack of funding. The Ministry of Justice confirms that hundreds of crime prevention initiatives have been funded in the last decade. However, they have typically been supported via time-limited or one-time funding.

It must be noted that some promising local practices the Panel became aware of are not discussed in detail in this report or made the object of a specific recommendation. We did not mean to exclude from further consideration any evidence-based approach that can produce significant crime reduction outcomes. On the contrary, the Panel acknowledges that all promising initiatives deserve consideration, whether or not they are mentioned in the present report.

Overview of Current Crime Reduction Initiatives

As noted in the introduction, British Columbia has had unparalleled success in driving down its crime rate over the past 10 years. A vast number of initiatives are already underway, with work taking place at three levels, generally referred to as "strands," reflecting the fact that they work most effectively – and are strongest – when woven together.

Those led by municipalities

For example, the City of Surrey has a Crime Reduction Strategy based on extensive consultation and collaboration with partners across the government and law enforcement agencies. The City of Prince George has also taken a multi-faceted approach to crime prevention that actively engages partners such as the RCMP, the Ministry of Children and Family Development, School District 57 and a range of community agencies to work collaboratively to create an environment where all citizens feel safe.

Many other communities have worked to improve their safety by identifying risk factors, situations and circumstances that negatively impact safety and taking action to address these factors and reduce crime.

The most successful crime reduction initiatives are those that build on community strengths and resources, reflect local priorities, and are owned and led by the community – with sustained and coherent leadership, including sustainable funding sources.

Crime reduction initiatives led by police

These exist in every community, with varying degrees of partnership and support from local and provincial agencies. Many police-led efforts target "hot spots" or geographic areas with high crime, while others focus on prolific offenders.

Police are also instrumental in organizations such as the BC Crime Prevention Association – an integrated team of citizens and police, providing ongoing province-wide education and awareness through community partnerships.

Crime reduction initiatives led by the provincial government

These include the *Justice and Public Safety Plan 2014 – 2017*, which provides a central vision and strategic plan for the sector overall, delivering on a key recommendation of the Cowper report. They also include the various dedicated strategies developed to address specific issues, including human trafficking, domestic violence, sexual exploitation of children and youth, and the recruitment of young people into gangs.

The Province is also working to address First Nations issues. For example, recent initiatives of the Ministry of Justice have focused on delivering First Nations policing services and programs that are culturally sensitive and responsive to the needs of First Nations communities. And the BC Justice and Public Safety Council is establishing an Aboriginal Advisory Board to help improve outcomes for Aboriginal peoples as sector-wide reform continues. [2]

Along with initiatives in these three strands, the Panel reviewed the evidence base for the relative success of various crime reduction initiatives in other parts of the world. These are described and referenced throughout our report with details provided in appendices.

Recommendations for crime reduction opportunities

Many of the issues raised in the Panel's consultations are already being addressed to varying degrees through existing programs and strategies. With that in mind, we've chosen to focus our recommendations on a few select areas where heightened attention and additional actions can deliver better outcomes. It is our intention that the recommendations will be implemented in concert with the broader reforms underway across the justice system, to take our crime-reduction efforts to the next level.

2 British Columbia Justice and Public Safety Council (2014). *Strategic Plan for the Justice and Public Safety Sector – April 2014 to March 2017*.

RECOMMENDATION #1

Manage prolific and priority offenders more effectively.

A relatively small proportion of habitual or "career" criminals accounts for the majority of offences committed.[3] While there is variation across samples, most evidence supports the Pareto principle that about 80 per cent of offences are committed by 20 per cent of offenders.[4] In fact, it is likely that this 80:20 ratio is an underestimate due to experienced offenders' abilities to evade detection. Using U.S. data, Cohen[5] estimated that "the average costs imposed on society by one male high-rate chronic offender is greater than $1.5 million." In other words, targeting prolific offenders can improve public safety while reducing total costs to society.

In 2008, the Province launched a pilot Prolific Offender Management Program in Prince George, Williams Lake, Kamloops, Surrey, Greater Victoria and Nanaimo. Bringing together resources from enforcement agencies (police, corrections and Crown) and health and social services, the project focused on a small group of prolific offenders, providing more intensive supervision and timely interventions, including links to public services. An independent evaluation of the program by Simon Fraser University[6] found a "significant association" between the program and reduced recidivism. It also found that offenders increased their use of physical-health services, housing and other social services, while having fewer negative police contacts and spending less time in custody. In the first-year follow-up period, the overall re-offence rate fell by 40 per cent.

The Province has made a commitment to continue the best practices learned in the pilot and incorporate them throughout British Columbia. The Panel strongly supports this direction and urges the government to take decisive action to ensure co-ordinated supervision, enforcement and access to services for chronic and other priority offenders. Specifically, the Panel recommends a comprehensive, province-wide Integrated Offender Management (IOM) program that builds on the success of efforts to date, bringing together criminal justice agencies, local authorities, health services and the voluntary sectors – for use as an alternative to short sentences or to help offenders reintegrate with communities after serving their time.

3 Croisdale, T. E. (2007). *The Persistent Offender: A longitudinal analysis*. Ph.D. Dissertation, School of Criminology, Simon Fraser University.

4 Piquero, A. R., Farrington, D. P., and A. Blumstein (2003). "The criminal career paradigm". In M. Tonry (Ed.), *Crime and justice: An annual review of research* (Vol. 30). Chicago: University of Chicago Press.

5 Cohen, M. (1998). "The Monetary Value of Saving a High Risk Youth", *Journal of Quantitative Criminology*, 14: 5–33.

6 *http://www.ag.gov.bc.ca/justice-reform-initiatives/publications/pdf/PPOM.pdf*

Successful crime reduction initiatives and programs require strong and effective partnerships, as well as close collaboration and the integration of appropriate services. British Columbia is a leader in the area of police integration. An early and crucial initiative in that area was the implementation of BC PRIME, the police records management system mandated by law and used by all police agencies in the province. B.C. is the only jurisdiction in North America to have achieved this degree of integration. For nearly 20 years, it has supported the establishment of integrated police teams to deal with a wide variety of serious and organized crimes and, by all accounts, it has been a spectacular success. It is based, in part, on the realization that not every police agency can afford to achieve and maintain the high levels of expertise required for certain complex and relatively rare types of investigation and intervention. Integration makes it possible to maintain a specialized and highly effective team of personnel to face these unique situations. Through this approach a high standard of effective policing is achieved while realizing considerable efficiencies for individual municipalities. This kind of integration together with greater coordination with other service providers will help ensure greater success in crime reduction in British Columbia

In developing a province-wide IOM program, the Panel urges the Province to:

- ***develop*** a comprehensive, evidence-based model for sentencing, managing, rehabilitating and supervising offenders, and supporting them to change their behaviour
- ***improve*** rehabilitation and treatment programs for offenders serving time in provincial institutions
- ***increase*** the effectiveness of pre-release programs and re-entry management interventions
- ***make wider use*** of proven, cost-effective methodologies such as electronic monitoring
- ***advocate*** for amendments to the *Criminal Code of Canada* that increase flexibility for judges
- ***support*** and encourage police throughout B.C. to build on their success and prioritize information-led, intelligence-led, proactive, problem-solving, offender-focused crime reduction, in partnership with other provincial and community-level service providers
- ***consistent*** with the current trend, amend the *Police Act* to require all police forces to participate in integrated services and offender management programs

For a more comprehensive discussion of prolific offender management, including the experience of other jurisdictions, see Appendix D.

RECOMMENDATION #2:
Make quality mental health and addiction services more accessible.

A high proportion of criminal activity is related to substance abuse, either directly or indirectly.[7] And the link between mental illness and addiction is now so undeniable that many professionals consider addiction a form of mental illness and no longer draw clear distinctions between the two. Regardless of their diagnoses, a significant proportion of addicts cannot work, which means that criminal activity becomes their primary revenue source. From the victim's perspective, this is particularly costly. Addicts can spend anywhere from $70 to $1,000 per day on their substance of choice; supporting that habit through stolen property drives them to steal goods worth up to 10 times that amount.

Drug treatment is also expensive. However, according to the US National Institute on Drug Abuse, "every dollar invested in addiction treatment programs yields a return of between $4 and $7 in reduced drug-related crime, criminal justice costs, and theft. When savings related to healthcare are included, total savings can exceed costs by a ratio of 12 to 1."[8]

Therefore, while there would be a cost to expanding mental health and addiction services, the evidence suggests that these investments would lead to significant savings in the future. To help ensure that service enhancements would help reduce crime, the Panel urges the Province to:

- ***enhance*** the treatment options available in the community, including to offenders in custody
- ***increase*** access to Aboriginal-led treatment programs for Aboriginal offenders
- ***prioritize*** funding for programs focused on sustainable long-term recovery
- ***develop*** provincial guidelines and standards for addiction treatment providers
- ***establish*** a taskforce, representing relevant ministries and agencies, to identify ways to address the issues related to unlicensed recovery homes.

For a more comprehensive discussion of addiction and mental health treatment programs and their role in crime reduction, including the experience of other jurisdictions, see Appendix E.

RECOMMENDATION #3: ***Make greater use of restorative justice.***

In his report to the Minister of Justice, Geoffrey Cowper recommended that the government develop a province-wide plan for diversion, including restorative justice, along with education, quality assurance and control, performance measures, reporting and evaluation.[9] The Panel reiterates that recommendation and urges the Province to consider making greater use of restorative justice (RJ) in particular.

7 While the focus here is on the use of illicit drugs, some authors (e.g., Miller et al., 2006) note that crimes attributable to alcohol appear to have twice the costs associated with them when compared with drugs.

8 *http://www.drugabuse.gov/publications/principles-drug-addiction-treatment-research-based-guide-third-edition/frequently-asked-questions/drug-addiction-treatment-worth-its-cost*

9 Cowper, D. G. (2012), *A Criminal Justice System for the 21st Century, Final Report to the Minister of Justice and Attorney General Honourable Shirley Bond*, Victoria, August 27, 2012, p. 12.

For some offenders, a formal criminal sanction is neither necessary nor useful to facilitate their social integration and prevent reoffending. Other, more effective and less stigmatizing interventions are possible in the community, including diversion programs that redirect offenders from the criminal justice process to more appropriate interventions.[10]

In B.C., restorative justice is most commonly used for less serious offences such as mischief, assault and theft. However, it can be used in any case where harm has occurred, the offender is willing to make amends, and the victim would like an opportunity to be heard, to have questions answered, or to seek restitution.

There are currently about 50 RJ programs across B.C., taking on low-risk cases referred to them by local police departments, schools, First Nations and Crown counsel. The Union of BC Municipalities (UBCM) and many other stakeholders would like to see this approach used more widely. The Panel concurs and, after reviewing a number of different models, believes that RJ is a cost-effective and promising approach.

Evidence is limited, but recent reviews indicate that, "a focus on reoffending outcomes alone fails to capture the extent of other benefits, such as victim satisfaction, offender responsibility for actions and increased compliance with a range of orders, among others".[11] A review of restorative justice conferencing using face to face meetings of offenders and victims showed that, on average, this approach can cause a modest but highly cost-effective reduction in repeat offending, with substantial benefits for victims.[12] In other words, like expanded access to mental health and addiction treatment programs, any further investment in RJ is likely to produce savings in the long-term.

The Panel recommends that the government develop, in collaboration with the UBCM, province-wide standards to govern the implementation and management of diversion and restorative justice programs.

For a more comprehensive discussion of diversion programs in general and restorative justice in particular, see Appendix F.

10 The *United Nations Standard Minimum Rules for Non-Custodial Measures* state that the development of new non-custodial measures should be encouraged and closely monitored (Rule 2.4). It is also stated that consideration should be given to dealing with offenders in the community, avoiding as far as possible the use of formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law (Rule 2.5). The development of a wide range of community-based measures is also advocated. The *Bangkok Rules* advocate the same for women offenders.

11 Joudo Larsen, J. (2014). *Restorative Justice in the Australian Criminal Justice System.* Canberra: Australian institute of Criminology

12 Strang, H., Sherman, L.W., Mayo-Wilson, E., Woods, D., and B. Ariel (2013). *Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review.* Campbell Systematic Reviews 2013:12

RECOMMENDATION #4:

Support an increased emphasis on designing out crime.

Many types of crime, particularly property crimes, are opportunistic and can be prevented through activities such as improved security, surveillance and planning. The growing body of research and evidence about this approach,[13] known as "situational crime prevention," tells us that success relies on a systematic analysis of current and emerging crime problems and the application of proven measures in selected spaces. Much more could easily be done in the province, to disseminate information on best practices to all concerned and to facilitate the systematic application of these methods where warranted.[14]

Some broader planning initiatives, including "crime prevention through environmental design" (CPTED) and urban renewal projects, can also have a significant impact on certain types of crime. The B.C. Association of Chiefs of Police, for instance, is strongly suggesting that a civil process be implemented for ensuring that problem premises, which create a focal point for criminal activity and a safety risk, are dealt with.[15] Bringing the *Community Safety Act* into force would respond to that recommendation.

The Panel heard about the dramatic and alarming rise in internet-based crime as it relates to identity theft as well as thefts and frauds against banking institutions and their customers. It is important to develop effective crime reduction strategies that target these very serious and disruptive criminal activities. Partnerships with the banking industry and financial community will be essential to the success of these strategies.

For a more comprehensive discussion of how to improve police capacity to reduce crime, see Appendix G.

For a more comprehensive discussion of crime prevention in general and situational crime prevention in particular, see Appendix H.

13 For example: Marzbali, M.H., Abdullah, A. and N. A. Razak (2011). "A Review of the Effectiveness of Crime Prevention by Design Approaches Toward Sustainable Development", *Journal of Sustainable Development,* 4 (1): 160-172. Also: Armitage, R. and L. Monchuk (2011). "Sustaining the Crime Reduction Impact of Designing Out Crime: Re-evaluating the Secured by Design scheme 10 years on", *Security Journal*, 24 (4), 320-343.

14 See for example: P.J. Brantingham and P.L. Brantingham, (2012) "Situating Situational Crime Prevention: Anchoring a Politically Palatable Crime Reduction Strategy. " In Nick Tilley and Graham Farrell (Eds), *The Reasoning Criminologist: Essays in Honour of Ronald V. Clarke*. New York and London: Routledge, pp. 240-251. Also: P. L. Brantingham, P. J. Brantingham, and W. Taylor, (2005) "Situational Crime Prevention as a Key Component in Embedded Crime Prevention", *Canadian Journal of Criminology and Criminal Justice*, 47: 271-292

15 A reference is made here to the *Community Safety Act* which is not yet in force.

RECOMMENDATION #5: *Strengthen inter-agency collaboration.*

Perhaps the clearest message that came through in consultations was the need for improved collaboration and coordination across the wide range of crime reduction initiatives across B.C. While the Panel saw examples of integrated teams working together in some communities, significant gaps in interagency collaboration remain.

There is clearly a need for a province-wide interagency collaboration model that supports the development of local partnerships.

Provincial and Municipal governments should actively work to break down bureaucratic silos, remove non-legally required barriers to information-sharing and concerted action, and promote greater and more effective cooperation in crime reduction activities at the provincial and community levels.

It is also clear to the Panel that B.C. needs a structured and appropriately resourced body to lead this work. While it would be logical to locate this new body in the Ministry of Justice, a range of possible approaches could be followed.

However the government chooses to proceed, the Panel urges the Province to appoint a senior crime reduction leader to improve interagency collaboration across the wide range of crime reduction activities in B.C.

As an important first step, the Panel recommends establishing an Interagency Community Partnership (ICP) pilot project in a designated community. Spearheaded by the new crime reduction leader, the project would bring together around a common table, on a regular basis, professionals and specialists from a dozen or more departments and agencies to deal with high-risk social and personal situations that cannot be addressed by a single agency and which, left unattended, would likely lead to criminal offending and victimization.

Simply put, the goal is to stop crime before it happens and keep individuals out of the criminal justice system. The focus would be on effective prevention, risk assessment, information sharing and collaboration to deliver real-time solutions along with better outcomes, greater efficiencies and significant cost savings.

ICP partner departments and agencies would:

- ***identify*** at-risk individuals in the community
- ***connect*** them promptly to appropriate services and effective interventions to manage and mitigate risk
- ***establish*** clear rules and procedures for appropriate information sharing
- ***draw*** on the knowledge and experience of local community leaders, and
- ***evaluate*** the pilot project after two years with a view to expanding it to other communities.

The crime reduction leader could also develop a centre of excellence (publicly accessible through a web presence) that would provide leadership, best practices, research on collaboration models in other jurisdictions and support or training for communities wishing to further improve interagency collaboration mechanisms and practices.

Finally, the crime reduction leader could play an important role in the development of a few, high-level crime reduction targets. In any event, the Panel strongly believes that a system for measuring crime reduction outcomes should be developed to help guide future investments.

RECOMMENDATION #6:
Re-examine funding approaches to provide better outcomes.

In the current fiscal environment, it is imperative to change the way we allocate resources to reduce crime. For example, the Panel heard many examples of one-off or time-limited funding approaches that left communities frustrated. Some existing funding could be redirected to support new approaches to dealing with persistent offenders, managing short incarceration sentences and supervising offenders in the community – all of which have significant potential to reduce costs over time.

Several jurisdictions are working on this type of reinvestment process. For example, the UK is taking a new approach[16] to managing offenders. It relies on private sector service providers, paying them in full only if they successfully reduce reoffending. In addition to providing performance incentives, this approach is expected to deliver savings, which will be directed to expanding rehabilitation support for offenders.

Closer to home, the Justice Policy Centre at the Urban Institute in Washington D.C. has developed a "justice reinvestment toolkit' for local leaders in which jurisdictions align the use of scarce criminal justice resources with public safety priorities.[17] These and other tools could be helpful in prioritizing funding for crime-reduction initiatives in British Columbia.

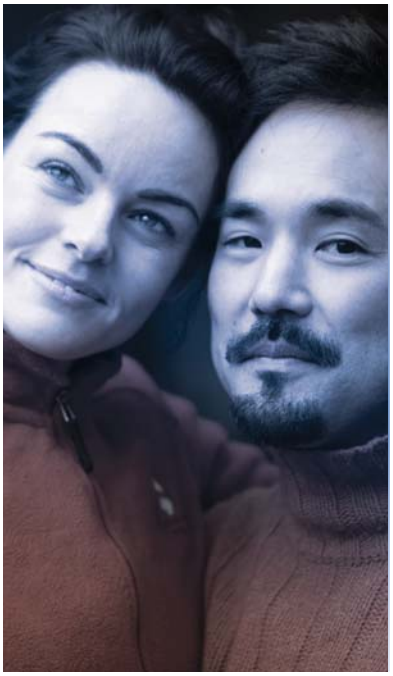
For a further discussion of funding approaches, see Appendix I.

All stakeholders need to reaffirm their commitment to an evidence-based crime reduction approach, supported by program evaluations and the dissemination of evaluation results.

For a further discussion of the need to promote and evaluate progress, see Appendix J.

16 U.K., Ministry of Justice, *Transforming Rehabilitation – A Strategy for Reform*, London, May 2013. See also: House of Commons Justice Committee (2014). *Crime Reduction Policies; A Co-ordinated Approach?* – Interim report on the Government's Transforming Rehabilitation Program, 22th Report of Session 2013-14, London, 22 January 2014.

17 Ho, H., Neusteter, S. R., and N. G. La Vigne (2013). *Justice Reinvestment – A toolkit for local leaders*. Washington (D.C.): Urban Institute, Justice Policy Centre. See also: Council of State Governments Justice Centre (2013). *Lessons from the States – Reducing Recidivism and Curbing Corrections Costs through Justice Reinvestment.* New York: Council of State Governments Justice Center.



Conclusion

British Columbians from many walks of life have helped to drive our crime rate down. While we can take pride in our successes, we must acknowledge that shifting our focus and doing some things differently could deliver real improvements in the quality of life for affected individuals, families and communities.

As the Panel's consultations made clear, we have a wealth of knowledge and experience to draw from; we have established policies and practices to build on; and perhaps most importantly, we have across the province countless citizens and organizations with a deep commitment to building a stronger, safer society.

With that in mind, our recommendations are broad and far-reaching with an overall focus on offenders – a small number of whom are responsible for a disproportionate share of the crime taking place in B.C. We recommend that the Province develop a comprehensive, evidence-based model for dealing with prolific and priority offenders across the justice and public safety sector in sentencing, managing, rehabilitating, supervising and supporting them to change their behaviour, desist from crime and successfully reintegrate with society.

This, we believe, is the key to getting serious about reducing crime. We look forward to seeing results in the months and years ahead.

Appendices:

Appendix A

Blue Ribbon Committee on Crime Reduction – Terms of Reference

Implementation of justice reforms to ensure a cost-effective justice system that has the confidence of the public is a key priority of government. One aspect of that reform agenda is crime reduction.

Crime reduction programs generally have two goals: to reduce crime and disorder, and to increase public confidence in the ability of the justice system to keep communities safe.

In his report *A Criminal justice System for the 21st Century*, Geoffrey Cowper QC recommended the development of a province-wide crime reduction plan. Crime reduction is identified as a priority item in White Paper Part Two: A Timely and Balanced Justice System, as well as in the proposed British Columbia Policing and Community Safety Plan.

Specifically, Action Item #8 of the British Columbia Policing and Community Safety Plan states:

> *In support of enhancing community safety, the Ministry of Justice will work with stakeholders to develop strategies to:*
> *a) support crime prevention efforts;*
> *b) support province-led crime reduction initiatives; and*
> *c) support further development of civil/administrative law strategies to enhance community safety*

At present, there are three strands of crime reduction activities in BC:

- Those led by municipalities. For example, the City of Surrey Crime Reduction Strategy, which is based on extensive consultation and collaboration with partners across the government and law enforcement agencies.
- Crime reduction initiatives led by police. Many of these initiatives target 'hot spots' or geographic areas with high crime and disorder activities, while others focus on apprehending prolific offenders.
- Crime reduction initiatives led by the provincial government, such as the Prolific Offender Management program and Vancouver's Downtown Community Court.[18]

18 The Downtown Community Court was a joint initiative led by the provincial government and the Provincial Court of British Columbia

NAME OF COMMITTEE

Blue Ribbon Panel for Crime Reduction (referred to as 'The Panel')

PURPOSE AND SCOPE

On June 7, 2013, Dr. Darryl Plecas was appointed as the Parliamentary Secretary to the Minister of Justice and Attorney General for Crime Reduction. His mandate is to chair a Blue-Ribbon Panel to study crime reduction opportunities. The Blue Ribbon Panel for Crime Reduction will:

Through consultation with stakeholders, review existing crime reduction initiatives and identify potential gaps, challenges and issues.

- Make recommendations for crime reduction opportunities and next steps including a plan for implementation.
- Deliver a report to the Minister of Justice by June 14th, 2014.

MEMBERSHIP

The Panel will be chaired by Parliamentary Secretary for Crime Reduction, Darryl Plecas.

The Panel consists of the following five members:

- Beverley Busson
- Gary Bass
- Jean T. Fournier
- Yvon Dandurand
- Geri Ellen Bemister

MANDATE / RESPONSIBILITIES

The primary functions of Panel members are to:

- Conduct a series of roundtables to elicit feedback from around the province
- Provide advice and recommendations to the Parliamentary Secretary for Crime Reduction about possible evidence led crime reduction opportunities.
- Identify individuals with subject matter or other expertise that could assist and provide advice to the Panel members.
- Liaise with ministry staff as required.
- Create and approve a report and recommendations regarding crime reduction opportunities.

The roundtables will bring together relevant stakeholder groups to discuss crime reduction opportunities, as well as current initiatives, approaches (such as environmental design that contributes to crime reduction), successes, gaps or challenges. Roundtable participants will be invited based on their specialized backgrounds and interests in this topic.

The Panel's work will inform the content of a report, from the Chair to the Minister of Justice, which includes the following:

- Results from the stakeholder consultation;
- Identification of opportunities for effective evidence-led crime reduction initiatives;
- An overview of current crime reduction initiatives around the province and other jurisdictions;
- Recommendations for crime reduction opportunities.

MEETINGS

Regular meetings of the Panel on Crime Reduction will be held at least once a month for the duration of the project until June 2014 at the call of the Chair.

Support such as arranging meeting date and times, agendas, minutes and distribution of documents to Panel members will be coordinated by ministry staff.

COMMUNICATION AND CONFIDENTIALITY

Unless otherwise authorized Panel members will not publicly share sensitive information about the Panel's work. Requests to release information must be directed to ministry staff.

SUPPORT

The Ministry of Justice will provide appropriate support to the Blue Ribbon Panel for Crime Reduction. The Ministry of Justice will reimburse travel expenses to members of the Panel for their attendance at meetings and roundtables, in accordance with applicable Treasury Board directives.

Appendix B

Blue-Ribbon Crime Reduction Panel Member Biographies

DARRYL PLECAS (CHAIR)

Darryl Plecas was elected MLA for Abbotsford South on May 14, 2013, and appointed Parliamentary Secretary for Crime Reduction on June 10, 2013. Previously, Plecas was the RCMP research chair and director for the Centre for Public Safety and Criminal Justice Research at the University of the Fraser Valley (UFV), where he worked for 34 years until being named Professor Emeritus in June 2014. He is the author or co-author of more than 200 research reports, journal articles, and other publications addressing a broad range of criminal justice issues. He holds two degrees in criminology from Simon Fraser University (SFU) and a doctor of higher education degree from the University of British Columbia (UBC).

Plecas has volunteered on advisory committees to the Correctional Service of Canada and the Justice Institute of BC, and on the selection advisory committee for the appointment of the Chief Justice of the Provincial Court of B.C. He has also served as a campaign cabinet division chair for the United Way, chair of the Long-Term Inmates Now in the Community (LINC) Society, a member of the Abbotsford Police Department's scholarship committee, a director on the Fraser Valley Child Development Foundation Board, and an appointee on the board of the Canadian Centre on Substance Abuse.

JEAN T. FOURNIER

Over his 46 years with the federal government, Jean Fournier oversaw important and sensitive government initiatives related to substance abuse, Aboriginal and northern affairs, the DNA Data Bank, land claims negotiations, pension reform, official languages amendments and agreements, the Canadian Multiculturalism Act, the Japanese Canadian Redress Agreement, the Financial Transactions and Reports Analysis Centre (FINTRAC) and the Senate ethics and conflict of interest regime. At the international level, Fournier chaired a committee of the Organization of American States to strengthen member states' capacity to deal with drug abuse and trafficking. He served as a deputy minister in the Government of Canada from 1986 to 2000 – the latter half of this time as deputy solicitor general. He also worked on two Royal Commissions. From 2000 to 2004, Mr. Fournier was Canada's High Commissioner to Australia.

Fournier joined the board of the non-profit Canadian Centre on Substance Abuse in 2006; he currently chairs its finance committee and is involved with nominations and governance. Previously, he served as a member of the board of the Vanier Institute of the Family from 1997-2000 and 2005-11, where he had been vice-president and chaired the executive committee for several years. Mr. Fournier is currently Vice-President of the Cedars Society at Cobble Hill on Vancouver Island.

YVON DANDURAND

Canadian criminologist Yvon Dandurand has decades of experience in justice policy and law reform. His work has involved law reform and criminal justice capacity-building and evaluation projects in Asia, Africa, Latin America and the Caribbean. His current areas of interest include justice reforms, juvenile justice, violence against women, organized crime, corruption and human trafficking.

For the last 20 years, Dandurand has worked and published in international criminal justice co-operation, treaty implementation, rule of law, human rights, criminal justice and law enforcement reform, capacity building and technical assistance, and post-conflict reconstruction. He has led numerous criminal law reform initiatives as a senior associate of the International Centre for Criminal Law Reform and Criminal Justice Policy, an affiliate of the United Nations. He has taught criminology and sociology of law at various Canadian universities and is currently associate professor, School of Criminology and Criminal Justice, University of the Fraser Valley and fellow and senior associate, International Centre for Criminal Law Reform and Criminal Justice Policy.

GERI ELLEN BEMISTER

Geri Ellen Bemister is an instructor in the Department of Criminology at North Island College in Courtenay. Previously, she worked in research and analysis with the RCMP research chair at the University of Fraser Valley's Centre for Public Safety and Criminal Justice Research. She holds an MA from UFV – where she received the Wally Oppal Endowment Leadership Award in 2011 – and a range of certificates in counselling and addiction services.

An expert on substance abuse issues, Bemister has undertaken addiction consultation for a wide range of agencies, including the Correctional Service of Canada. She owns and operates a practice providing counselling to individuals, groups and families, and has served as team lead at Kinghaven Peardonville House Society, an Abbotsford treatment centre. She has also volunteered widely, including as board chair with Recovery Day Nanaimo, and with the Kids4Kids Afterschool Program and Edgewood Treatment Centre in Nanaimo.

BEVERLEY BUSSON

Bev Busson joined the RCMP with its first class of female members in 1974. Initially stationed in Salmon Arm, she later served in Kelowna and North Vancouver. Following studies in criminology, completion of a law degree at UBC in 1990 and work at RCMP headquarters in Ottawa, she eventually returned to Vancouver in 1995, where she led an elite team dedicated to covert surveillance.

In 1997, she became the first woman to serve as chief superintendent in charge of criminal operations for Saskatchewan. The following year, she became the first female commanding officer, also in that province. In 1999, Busson returned to B.C. to head the newly designated British Columbia Organized Crime Agency. She returned to the RCMP in 2000 as B.C.'s commanding officer and received an additional role – deputy commissioner for the Pacific Region, which included the Yukon – in 2001. In 2004, the University College of the Fraser Valley awarded her an honorary doctor of laws; a second, from SFU, followed in 2010. In 2006, she became the 21st commissioner of the RCMP and the first woman in that position, as well as the first police officer awarded the Order of British Columbia. She retired from the force in 2007.

GARY BASS

Gary Bass served nearly 40 years with the RCMP, including as Deputy Commissioner Canada West. During his RCMP career, he developed expertise in drug and organized crime investigations, terrorism and homicide investigations, major case management and crime reduction strategies. He has been extensively involved in the international development of training in advanced investigative techniques and has been qualified as an expert witness in relation to several of these activities. His many awards include two Commissioner's Commendations, Commanding Officer's Commendations, and awards from the lieutenant governor for outstanding service and meritorious service.

Bass holds an MA in criminal justice and is currently a senior research fellow with the Institute for Canadian Urban Research Studies in SFU's School of Criminology. His research interests include developing meaningful performance measures for policing and integrated criminal justice system structures, understanding the impact of falling crime rates on the future of policing, effective drug treatment programs, and First Nations, rural and northern policing.

Appendix C

What the Panel Heard

While it is impossible to do justice here to all the suggestions and recommendations the Panel received, the following summarizes those suggestions most immediately relevant to a comprehensive crime reduction strategy. Although the Panel heard from a wide range of parties, there was a remarkable degree of consistency throughout the provincial roundtables in terms of both the problems identified and the solutions suggested. (The summary of findings below is followed by a list of the organizations that participated in the Panel's consultations.)

People did not always agree on how much crime is in their community or whether crime rates are going up or down. There is evidence that the nature of crime is changing rapidly and that new forms of crime are not always fully captured in official statistics. Victims' crime reporting behaviour is evolving and this may affect the kinds of crime that come to police attention. Police have sometimes changed the way they record criminal incidents for statistical purposes and that affects the picture depicted by crime statistics. People can certainly point at these and other reasons for being skeptical about official crime statistics and whether they always can be trusted as an indicator of the prevalence of crime in a given community. Official crime data does not capture the full extent of people's victimization and victimization survey data is only sporadically available.

People's views on the prevalence of crime in their community and feeling of insecurity are not necessarily related to crime statistics. Regardless of statistics, local perceptions of crime are obviously based on other factors. Local media reports and people's own experience of crime and insecurity play a far greater role in shaping their views on the risk of victimization.

Many stakeholders emphasized the need for early interventions and developmental prevention programs for at-risk children and youth. The vulnerability of children in care and children of parents in conflict with the law, incarcerated or struggling with addiction issues was frequently mentioned. The frequently unaddressed needs of children with school adaptation issues or learning disabilities, and children suffering from mental illness, fetal alcohol spectrum disorder, attention deficit hyperactivity disorders and substance abuse disorders were also mentioned.

While the evidence on early intervention programs on adult criminal offending only provides for "cautious optimism,"[19] stakeholders generally agreed that early prevention programs are a sound and necessary investment – even if their immediate impact on crime is not always noticeable. Those who presented to the Panel frequently emphasized the importance of education programs, and programs to give children and youth the skills to succeed.[20]

19 Dekovic, M., Slagt, M. I., Asscher, J. J., Boendermaker, L., Eichelsheim, V.I., and P. Prinzie (2011). "Effects of Early Prevention Programs on Adult Criminal Offending: A meta-analysis", *Clinical Psychology Review, 31*: 532-544.

20 For some of the scientific evidence, see: Ross, A., Duckworth, K., Smith, D.J., Wyness, G., & Schoon, I. (2011). *Prevention and Reduction: A review of strategies for intervening early to prevent or reduce youth crime and anti-social behaviour*. London, UK: Centre for Analysis of Youth Transitions.

Also frequently mentioned was the need for targeted prevention programs to address the situation of individuals and groups at risk before they engage in criminal activities. In particular, stakeholders emphasized the need for more effective interventions and coordinated action to provide assistance to people suffering from a mental disorder or illness, people with substance abuse issues and, in particular, people who face both a substance abuse disorder and a mental disorder. This need, the Panel was told, is particularly acute in remote communities.

Domestic violence and sexual violence against women and children were consistently mentioned as a pressing community concern and an urgent priority for crime reduction. Many stakeholders expressed great concern about the many violent crimes against children and women that go unreported and unaddressed. The need to improve the support and assistance provided to domestic violence victims and women and child victims of serious crimes was repeatedly emphasized.

Stakeholders commented on the success of the Domestic Violence Unit (DVU) and the Interagency Case Assessment Team (ICAT), which use a collaborative approach to review the risk of serious bodily harm or death to victims of domestic/intimate partner violence or stalking provide an enhanced safety and support system to the victim and control the offender through proactive interventions.[21]

The Panel visited the offices and met with the staff of the Greater Victoria Regional DVU, a co-located team that includes police, community based victim services and the Ministry of Children and Family Development providing timely follow-up services in select domestic violence cases where high risk factors are present or in cases where there is an elevated level of risk to victims, and/or their children, accompanied by a need for intensive victim support.[22]

There were frequent references during the Panel's consultations to the lack of community-based programs for domestic violence offenders. The Province has adopted an action plan on domestic violence; BC Corrections offers a Relationship Violence Prevention program and many communities have implemented successful programs to prevent and respond to domestic violence, but much more remains to be done.

21 Unlike the DVU, the ICAT is not an investigation unit. Domestic violence cases that are potentially high risk are referred to the police ICAT contact. The police ICAT contact then circulates the victim and suspect names and birthdates for the next ICAT meeting. If the situation is urgent an emergency meeting may be arranged as soon as practicable. ICAT individual members then research their agency for relevant risk related information about the victim and suspect. This information is brought to the ICAT meeting where data is reviewed for presence of BCDVS 19 Risk Factors. When the risk level is determined, information sharing proceeds and a report is created. An enhanced safety plan for the victim and a monitoring and support plan for the suspect are developed. This description is taken from: Community Coordination for Women's Safety (2014). "What are domestic violence interagency assessment teams and what do they do?" *Information Bulletin*, Vancouver, May 2014.

22 Laidman, J. (2013). *Regional Domestic Violence Unit – Third year report to the joint management team*. Victoria, October 25, 2013. See also: Wood, J. and L. Johnson (2013). *The Capital Regional District Domestic Violence Unit: An Evaluation Framework*, unpublished.

The BC Centre for Excellence in HIV/AIDS also argued that the decriminalization of sex work, or the removal of sanctions targeting sex workers, clients and managers/third parties, is critical to reducing rates of violence and assault for sex workers and communities, and removing barriers for sex workers to access critical health, social and legal support services.[23]

> *"Northern B.C. has special challenges and opportunities as we grow our economy and the population. We must continue to reduce crime through public education and awareness as well as innovative programs aimed at early prevention and deterrence."*
>
> **SHARI GREEN**
> ***Former Mayor, Prince George***

Many stakeholders voiced their concern about the specific crime problems associated with rapid development of large natural resource projects in northern communities. In Fort St. John and other northern communities, local law enforcement and community resources are clearly insufficient to deal with the large influx of workers and some of the related public disorder and crime issues. The matter is very urgent, given plans for expanded and significant growth in the natural resource sector in northern and remote communities.

The issue of lack of services or lack of local access to services for people with mental illness or substance abuse disorder was a central concern for many communities. The Panel heard widespread concern about the lack of community based resources to assist individuals with mental health issues and noted the impact of this lack of services on the number of calls for police services, on public order and on people's feelings of insecurity. Police reported that, on average, a fifth or more of the calls for service they receive relate to unaddressed mental health issues.

In its report on the economics of policing, the Standing Committee on Public Safety and National Security of the House of Commons noted that front-line police officers are not best equipped to deal with mental health. The committee recommended that "governments constitutionally responsible for health care work in collaboration with local police forces through the health care system to achieve better practices when dealing with persons having mental health problems and illnesses, outside of the police being the first and only line of response."[24]

23 Submission of the BC Centre for Excellence in HIV/AIDS to the Blue Ribbon Panel on Crime Reduction, prepared by J. Montaner, with input from I. Day, E. Wood, B. Nosyk, S. Goldenberg, K. Shannon, M-J. Milloy, and T. Kerr, April 30, 2014.

24 Standing Committee on Public Safety and National Security (2014). *Economics of Policing – Report of the Standing Committee on Public Safety and National Security*. 41st Parliament, Second Session, House of Commons, Canada, May 2014, p. 17.

On the other hand, many stakeholders commented on the apparent success of the Ministry of Health's Assertive Community Treatment teams deployed in many parts of the province. These teams provide community-based, client-centered, recovery-oriented outreach mental health services for adults with serious and persistent mental illness and significant functional impairments who have not connected with, or responded well to, traditional mental health and rehabilitation interventions. Stakeholders deplored the fact that, because of their cost, only 15 such teams are currently deployed, when approximately 60 would be required for the whole of the province.

Many communities realize that much of the property (acquisitive) crime and some of the violent crime they face are fueled by the unaddressed drug addiction issues of chronic offenders. There is a perceived need for greater emphasis to be placed on providing recovery services and timely access to recovery programs for offenders who want a drug-free life. Recovery is a way to facilitate the effective rehabilitation and social reintegration of individuals regardless of the legal status of the drug. Recovery programs, it was often mentioned, need to be integrated into the criminal justice response to offenders with substance abuse and addiction problems.

The lack of access to effective drug and alcohol addiction treatment and recovery support programs was unanimously identified as a major issue throughout the province. For example, a delegation from Port Hardy indicated they had 500 individuals in that community needing treatment and only a six-bed facility. The lack of funding for abstinence-based and other recovery support programs was described as a serious issue everywhere and as one of the main reasons for the high rates of recidivism observed across the province amongst offenders suffering from substance abuse disorder. The province's Public Health Officer and many other stakeholders also emphasized the great and persistent gaps in available psycho-social support services for people in treatment or in recovery.

The Panel heard about the Methadone Maintenance Treatment Program (MMTP) and its role in achieving some of its public health and treatment objectives. On the other hand, the Panel also heard frequent and very vocal criticisms about the MMTP and how it is currently administered. The Panel heard from individuals in recovery about their negative experience with the MMTP. We also heard that the costs of the program are significant (in excess of $45 million per year) and that, notwithstanding its potential impact in terms of other harm reduction objectives,[25] its impact on crime reduction is minimal. It was frequently suggested to the Panel that the time has come to consider a completely different approach to the treatment of offenders with opium addiction, reconsider the extensive use currently made of "addiction management programs" and "opioid replacement programs" to deal with these offenders, and involve the Ministry of Health in ensuring that adequate treatment and recovery programs are offered to offenders in both the custodial and the community environments.

25 See also: BC Methadone Maintenance System – Performance Measures 2011-2012, Ministry of Health 2013.

Support was also expressed for offering more programs for offenders with addiction issues based on the therapeutic community (TC) model, such as the TC program offered by BC Corrections at Guthrie House in Nanaimo, and for community-based residential recovery programs.

There is a significant issue in some communities with the proliferation of unlicensed and, in some cases, predatory recovery houses. The Fraser Health Authority reported 240 "recovery houses" in the area it serves with only eight of them properly licensed. British Columbia, it was argued, is the only jurisdiction in Canada allowing these types of recovery houses. There was a clearly articulated need for a regulatory scheme around recovery houses due to the perceived corruption and abuse by many of their operators.

The Panel also received a written submission advocating in favour of replacing the current drug prohibition regime by a regulatory policy as a means of reducing crime. The authors argued that the increase in crime generated by drug prohibition is not offset by any decrease in drug usage or supply.[26]

A consistent frustration was expressed at nearly every roundtable about the lack of collaboration amongst the relevant government ministries, and between them and local community leaders and organizations. Disjointed approaches, fragmented interventions, and the propensity of many professionals to work in isolation from others ("silos") were held responsible for the lack of success of many local crime reduction initiatives. Many stakeholders advocated for a "whole of government" approach to crime reduction with related measures that hold local managers accountable for their agency's performance with respect to crime reduction.

The lack of effective information sharing practices was of serious concern everywhere, with most stakeholders reporting how utterly difficult it is in the present environment to get information from each other, and in particular from the health sector. Many of the professionals consulted spoke of the lack of clarity within their own agency and among stakeholders about what, when and how information can be shared while complying with privacy protection laws and policies. It was frequently suggested that the government should publish clear guidelines on information sharing, under existing laws, for the purposes of public safety, child protection and crime reduction, or even legislate in that area if necessary.

In spite of the perceived obstacles to inter-agency collaboration, many communities have forged ahead and developed promising offender management and problem solving approaches to reduce crime. There is much to be learned from the experience of these communities and the role of local leadership, in particular police leadership, in bringing various agencies to work collaboratively toward crime reduction and public safety goals.

26 Submission to the Panel by Law Enforcement Against Prohibition, "Towards Effective Crime Reduction: The urgent need to end drug prohibition", May 2014.

A concern was frequently expressed about the lack of effective diversion programs. Support was generally expressed for meaningful programs and services to which offenders can be diverted when appropriate. A number of presenters called for a greater use of the restorative justice (RJ) approach. The Panel was told that the lack of referrals to existing diversion and RJ programs has hindered their further development. However, some programs have found ways to successfully address that issue.

The importance of effective RJ programs was reiterated at nearly every roundtable meeting. The Ministry of Justice currently supports community-based restorative justice responses through funding for Community Accountability Programs. The need to provide adequate funding for these programs was frequently raised and it was suggested that a different funding formula should be adopted. Municipal governments often contribute to funding these programs and are apparently willing to continue to do so. It is clear that some impressive and valuable RJ programs are already in place in a number of communities. However, it was also clear to many stakeholders that the quality of existing programs across the province varies and that provincial standards should be adopted and their implementation monitored.

Support was often expressed for establishing problem-solving courts (drug courts, community courts, family violence courts, etc.). There were many views about what these courts could actually accomplish or the desirability of establishing them in various parts of the province. It was clear that many stakeholders were attracted by the model because of its apparent promise to "resolve problems" in a more effective and efficient way than the normal justice process.

Concerns were frequently expressed about the general ineffectiveness and the social and financial costs of short-term incarceration sentences and sentencing practices that seem to set people up for failure. Some stakeholders articulated a need for more effective sentencing practices focused on encouraging desistance from crime. In particular, a real concern was prevalent throughout the province about prolific and priority offenders and the criminal justice system's apparent inability to manage these offenders and encourage their desistance from crime. In communities where a police-based Prolific Offender Management (POM) initiative had been implemented, stakeholders often mentioned the importance of building on this foundation, learning from the experience, and designing an effective integrated offender management system for the whole province.

The problem of funding for community-based crime reduction programs was raised countless times during the consultations. This included the need for adequate funding for non-profit organizations and community partners whose work with offenders is often crucial to the success of crime reduction initiatives. Some stakeholders complained bitterly about the absence of funding for and adequate follow-up to, successful pilot crime reduction projects. It was suggested that a fundamental change is required to the manner and basis upon which crime reduction initiatives are currently funded in the province.

Overwhelming concern was expressed about the staggering rates of recidivism among offenders under the authority of provincial corrections. This was seen as relating directly to the lack of re-entry planning and supervision for offenders serving short prison sentences and the absence of consistent strategies and effective programs to facilitate their social reintegration. Some stakeholders believed that a greater use should be made of non-governmental agencies already involved in facilitating the social reintegration of offenders and that the ministry should develop more effective partnerships with them. They also expressed concerns about what they felt was the limited availability and poor quality of community corrections programs in remote areas and in First Nations communities.

The Panel heard about the continuing over-representation of First Nations children and adults in the criminal justice system. Many spoke of the need for comprehensive community based, culturally sensitive and effective interventions for First Nations. Many First Nations communities draw on their own healing programs and are experimenting with different ways of dealing with members of their community involved with the justice system and reintegrating them successfully. The valuable work of native court workers and the progress made in implementing First Nations Courts and Elders Justice Councils were frequently noted.

The Panel also heard about the perceived ineffectiveness of treatment programs and interventions in provincial correctional facilities. Corrections officials frequently indicated that many of the inmates in custody should be receiving treatment instead of a custodial sentence. A linked issue was that of the perceived inadequate supervision of offenders in the community under conditions imposed by a court order. Stakeholders generally supported the idea of improving current community supervision programs and finding ways to deal more effectively with situations where a court imposed condition is being breached.

Support was expressed for making greater use of surveillance technology to enforce court orders and protect victims, including electronic monitoring of offenders in domestic violence cases. Some stakeholders believed that the role and functions of probation officers in this province should be completely reconsidered, with an eye towards spending more time one-on-one with offenders.

The following organizations participated in the Panel's roundtables and consultations:

Abbotsford Community Services Society
Abbotsford Downtown Business Association
Abbotsford Police Department
Abbotsford Restorative Justice and Advocacy Association
Aboriginal Community Justice Councils
ACR Programs Ltd.
Alano Club of Courtenay A&D Committee
Alert Bay Community Justice Program
Aspirational Youth Partners Association
BC Association of Community Response Networks
BC Association of Police Boards
BC Centre for Excellence in HIV/AIDS
BC Crime Prevention Association
BC Crime Prevention Association (New Westminster Police)
BC Housing Management Commission
BC Hydro
BC Institute of Technology
BC Ministry of Aboriginal Relations and Reconciliation
BC Ministry of Child and Family Development
BC Ministry of Children and Family Development, Youth Probation
BC Ministry of Education

BC Ministry of Education School Districts
BC Ministry of Health
BC Ministry of Justice
BC Ministry of Justice, Aboriginal Programs & Relationships
BC Ministry of Justice, Community Safety and Crime Prevention
BC Ministry of Justice, Corrections Branch, Community and Custody Divisions
BC Ministry of Justice, Criminal Justice Branch
BC Ministry of Justice, Security Programs Division
BC MLA Liberal Caucus
BC MLA NDP Caucus
BC Schizophrenia Society
BDO Consulting
BMO
Business Improvement Associations
Canadian Bankers Association
Canadian Centre on Substance Abuse
Canadian Mental Health Association
Capital Region Action Team
Cariboo Action Training Society
Cedars at Cobble Hill
Centre for Safe Schools and Communities, UFV
Chambers of Commerce
Children and Youth BC
Children of the Street Society
Chilliwack Restorative Justice and Youth Advocacy Association
Circle of Eagles Lodge Society
City of Abbotsford
City of Burnaby
City of Campbell River
City of Coquitlam
City of Courtenay
City of Cranbrook
City of Fort St. John
City of Ladysmith
City of Langley
City of Pitt Meadows
City of Port Coquitlam
City of Prince George
City of Richmond
City of Surrey
City of Surrey Fire Services
City of Terrace
City of Vernon
City of Victoria
City of White Rock
City of Williams Lake
CKR Global
CKR Global Risk Solutions
Communities Embracing Restorative Action
Comox Valley Citizens on Patrol
Comox Valley Restorative Justice Society
Correctional Service Canada
Cowichan Tribes
Cowichan Women against Violence
Crime Stoppers Advisory Board - BC
Delta Police Department
District 69 Family Resource Association
District of Central Saanich
District of Delta
District of Kent
District of Maple Ridge
District of North Vancouver
Douglas College
Downtown Community Court Team/Mental Health Program
Duncan Youth Inclusion Program
East Kootenay Addiction Services Society
Edgewood
Elizabeth Fry Society
Ending Violence Association of BC
Esk'etemc First Nation
Esk'etemc Restorative Justice Program
Fraser Health Authority
Government of Saskatchewan
Haida Health Centre
Harvest Discovery Homes
Institute for Canadian Urban Research Studies and School of Criminology, SFU
Insurance Corporation of BC
Interior Health Authority
John Howard Society
Justice Institute of British Columbia
K4K Nanaimo
Kinghaven Treatment Centre
K'omoks First Nation

Ktunaxa Nation Council
Kwadacha Band
Kwantlen Polytechnic University
Langara College
Legislative Assembly of BC
London Drugs
Lower Similkameen Indian Band
Lulumexun (Lands & Governance)
McCreary Centre Society
Metro Vancouver CrimeStoppers
Mount Royal University
Nak'azdli Alternative Justice Centre
Native Courtworker and Counselling Association of BC
Nelson Police Department
New Westminster Police Board
New Westminster Police Service
Nisga'a Lisims Government
North Island College
North Island Crisis and Counselling Centre Society
North Peace Justice Society
Northern Health Authority
Northern Lights College
Oak Bay Police Department
Office of International Diplomacy
Pacific Centre Family Services
Police Victim Services of British Columbia
Port Kells Community Association
Port Moody Police Department
Port of Vancouver
Prince George Activators
Prince George Native Friendship Centre
Prince George Urban Aboriginal Justice Society
Prince Rupert Aboriginal Justice Program
Private Family Practice MD
Private Law Firms
Provincial Association of Residential and Community Agencies
Provincial Office of Domestic Violence
Public Safety Canada
RCMP "D" Division
RCMP "E" Division Head Quarters
RCMP Districts and Detachments in BC
Regional Domestic Violence Unit
Restorative Justice Society of North Okanagan
Restorative Justice Victoria
Ridge Meadows Youth Diversion Program
Saanich Police Department
Secwepemc Community Justice Program
Simon Fraser University
South Coast BC Transportation Authority Police Service
South Okanagan Restorative Justice Program
Stepping Stones Recovery, Alano Club
Stl' Atl' Imx Tribal Police Service
Surrey Board of Trade
TD Bank Group
The M2/W2 Association
Thompson Rivers University
Tillicum Lelum Aboriginal Society
Tl'azt'en "Healing Circle" Justice Program
Town of Comox
Township of Esquimalt
Township of Langley
Township of Spallumcheen
Tsilhqot'in Community Justice Program
UCL Jill Dando Institute of Security and Crime Science, UK
Union of BC Municipalities
University of the Fraser Valley
Vancouver Board of Trade
Vancouver Coastal Health Authority
Vancouver Foundation
Vancouver Island Therapeutic Community
Vancouver Police Department
Victoria Police Board
Victoria Police Department
Village of Ashcroft
VisionQuest Recovery Society
Welcome Home Society
Wet'suwet'en Nation
White Buffalo Aboriginal and Metis Health Society
Wilfred Laurier University
Williams Lake Band
Women's Contact Society
YMCA/YWCA

Appendix D

Reducing Recidivism: Integrated Offender Management

Some of the most significant reductions in crime are likely to be achieved by focusing on offenders at high risk of reoffending. A focus on reducing recidivism, particularly among prolific and priority offenders, must be a cornerstone of the province's crime reduction strategy. The current approach to reducing recidivism among these offenders is too often limited to a patchwork of disjointed punctual interventions in their life, without a significant impact in terms of their desistance from crime. This must change.

Many offenders spend years in the care of one juvenile or adult justice agency or another. Significant resources are expended investigating the crimes they commit, processing them through an expensive and encumbered criminal justice process, and submitting them to countless ineffective interventions. These offenders are collectively responsible for a large proportion of the crimes committed each year. They are well known within the criminal justice system: they were assessed, punished, treated and assisted in various ways. Yet, in the end, very few of these interventions have produced the outcome that society has a right to expect: desistance from crime. This "revolving door" type of intervention does not really contribute to public safety and is simply not sustainable. A different approach to managing these offenders is required.

An obvious goal of all criminal justice interventions is to deter offenders from committing further crimes, in other words to compel or encourage the offender to desist from crime, to stop reoffending. One of the justice system's performance measures suggested in the Justice and Public Safety Council's Strategic Plan is the "rate of reoffending among higher-volume offenders".[27]

Reducing the number of individuals who reoffend means fewer victims, greater community safety and less pressure on law enforcement agencies. The successful reintegration of offenders means that fewer of them will appear again before criminal courts, come back to prison and contribute to prison overcrowding, and generally increase the costs of the criminal justice system.

Currently, few if any services and little supervision are offered to offenders after their release following a short-term prison sentence.

The UK is introducing a program to guarantee that all offenders, regardless of their sentence length, receive statutory supervision and rehabilitation upon their release. The Panel can think of a lot of arguments and evidence in favour of such an approach.

27 JPSC's Strategic Plan, p. 18.

SUPPORTING DESISTANCE FROM CRIME

Studies of criminal careers and various program evaluations have brought criminologists to understand "desistance from crime" not as a single event or moment in the life of an offender, but as a process by which, with or without the intervention of criminal justice agencies, offenders terminate their offending activities and maintain crime-free lives. It is usually achieved over a period of time. Programs based on desistance theory emphasize long-term change over short-term control, recognizing that progress is unlikely to be direct or continuous. In many ways and for many offenders, desistance from crime resembles the process of recovery from addiction.[28]

People desist from crime for a variety of reasons. The evidence is quite clear that desistance can be supported by focusing on factors that are directly linked to criminal behaviour (such as attitudes, lifestyles and substance abuse) and offering assistance, including housing, employment, help with relationships and education or acquiring marketable skills. In many cases, assistance is also needed to help offenders deal with previous trauma, sometimes related to their own victimization.

Desistance from crime is facilitated by helping offenders address their criminogenic (offending-related) needs/factors. However, the challenge of turning a convicted offender away from crime often requires a form of integrated offender management.

This is the major focus of the Panel's recommendations. We came to the conclusion that significant changes are needed in the way we manage offenders and intervene to prevent them from reoffending. This is why we are proposing changes to current offender management practices and programs.

INTEGRATED OFFENDER MANAGEMENT

A variety of programs have emerged in several countries based on inter-agency collaboration as a means of improving offender outcomes, (i.e. reducing reoffending). There is conclusive evidence that successful crime reduction strategies must include, as a matter of urgent priority, proven (evidence-based) offender treatment, rehabilitation and supervision practices.

At present, in this province, release planning and programs to facilitate the successful social reintegration of offenders are apparently minimal. For example, in a 2011 report, the B.C. Auditor General found that Community Corrections had not sufficiently analyzed the role it plays in decreasing the reoffending rate by those who serve community sentences. The way in which this rate is measured makes it difficult to confirm a trend. The report noted that, at that time, only 35 per cent of interventions designed to reduce reoffending were ever completed. It also noted that, "the lack of completion means potential increased risks to public safety and costs to taxpayers and victims, should offenders re-offend."[29]

28 For example, see: McNeill, F. and B. Weaver (2010). *Changing Lives? Desistance Research and Offender Management*. Glasgow School of Social Work and the Scottish Centre for Crime and Justice Research.

29 Auditor General of British Columbia (2011), *Effectiveness of BC Community Corrections*, 2011- Report 10.

Correctional interventions need to be coordinated between correctional services, the police, community service agencies and, when necessary, mental health and addiction services. This is what is normally understood by the "integrated offender management" (IOM) approach. This is what inspired some prolific offender management programs. But this is, by and large, what fails to happen consistently in this province.

There currently is a limited Integrated Offender Management program in place within BC Corrections, linking community corrections with custody in selected cases (where an offender is sentenced to a minimum of 90 days with a community corrections sentence following the custodial sentence). The program essentially demonstrates that managing the offender re-entry process can produce crime reduction outcomes, but the rates of reoffending within that particular program are still in the 50 to 60 per cent range.

Building on the success of prolific and other priority offenders programs, a comprehensive, province-wide program of Integrated Offender Management can provide a strategic framework to bring together representatives from criminal justice agencies, local authorities, health services and the voluntary sector, to address locally determined offending priorities through targeted interventions. Specific guidance, based on experience and research, should be given province-wide on the implementation of an offender management scheme involving the criminal justice system as a whole and its key partners. IOM can be successfully applied as an alternative to short sentences[30] or as a form of offender re-entry management program.

ADMINISTRATION OF JUSTICE OFFENCES

The Government's White Paper on Justice Reform notes that administration of justice offences are used to help manage offenders and accused in the community, and may be laid when an offender or accused violates terms set out in a court order. They include such offences as failure to appear in court, breach of a probation order or being unlawfully at large.

> *"Ensuring offenders abide by court orders, attend court and abide by their bail or probation conditions is a fundamental step in offender management to reduce recidivism."*
>
> **CHIEF CONSTABLE BOB RICH**
> ***and* A/COMMISSIONER NORM LIPINSKI**
> ***– on behalf of the BC Association of Chiefs of Police***

30 See for example: Revolving Door Agency (2013). *Integrated Offender Management – Effective alternatives to short sentences*, London.

An effective community-based offender management approach involves intensive surveillance and supervision of offenders via coordinated police and community corrections activities, supported by assistance and supportive interventions including referrals to employment, housing programs, mental health and addiction treatment and recovery support, and cognitive retraining programs. The approach is further supported by prompt investigation, apprehension and conviction following reoffending or breach of bail or sentence conditions. Swift re-conviction can be facilitated by the appointment of a dedicated prosecutor to manage files generated as a result of the targeting and increased supervision.

Effective supervision is achieved by coordinating the enforcement of release conditions, probation orders or bail supervision orders and by ensuring the offenders' immediate return to the courts upon breaching these conditions or reoffending. This involves proactive and effective interventions on behalf of the police, probation officers, prosecutors and the courts to ensure that a meaningful and swift response is given in all cases where offenders reoffend or breach the conditions attached to a court order.

However, the evidence to date is also pretty clear that intensive supervision alone does not produce appreciable results in terms of desistance from crime and consequently, crime reduction. On the contrary, when unaccompanied by effective interventions to address needs and risk factors, it only leads to breaches of conditions and re-offending which contributes to little else than further clogging the criminal justice system and trapping these offenders in the revolving door cycle of reoffending.

CAPACITY OF COMMUNITY CORRECTIONS SERVICES

The Panel heard repeatedly about the many limitations of BC Corrections in ensuring that effective community supervision is offered in all cases where offenders are serving a community-based sentence, and in participating fully in Integrated Offender Management with other relevant agencies. The Panel was not in a position to review existing programs and analyze the Province's community corrections capacity, but that should be done urgently. Immediate measures should also be taken to improve the ability of BC Corrections to provide a greater range of effective community supervision services.

The Panel, during its consultations, became acquainted with some valuable community resources as well as many of the dedicated professionals and volunteers from non-governmental organizations working to assist the reintegration of offenders. Their efforts need to be better mobilized and supported.

Under that enhanced system, offender management would be ensured not only by BC Corrections, but also by capable community agencies and, in some instances, First Nations agencies. In all cases, BC Corrections should be expected and, perhaps also mandated by law, to integrate its activities with law enforcement and other relevant agencies.

The enhanced system would obviously require some investments in community corrections and in services and treatment programs to help offenders address the risks and needs associated with their criminal behaviour. The non-governmental sector would need help to contribute to a much larger extent than it currently is.

ELECTRONIC MONITORING

One alternative is the use of electronic monitoring (EM) with GPS-enabled anklets. Electronic monitoring is not perfect. Some individuals with EM devices commit crimes while being monitored just as some people on bail, probation or parole commit offences. Occasionally, offenders escape "secure" custody and re-offend. The issue, however, is the relative effectiveness of EM in comparison with the alternatives.

Furthermore, the technology underlying EM devices is evolving quickly. Where specialized networks were once required, some current EM devices take advantage of the ubiquity of cell phone towers for tracking. In London, England, the Ministry of Justice has already acquired some experience with contracting out electronic monitoring and the community payback scheme.[31]

Electronic monitoring is successfully used in many jurisdictions to increase the effectiveness of offender supervision programs. For example, a large study of Florida offenders placed on electronic monitoring found that it significantly reduced the likelihood of failure under community supervision. The observed decline in the risk of failure was about 31 per cent compared with offenders placed on other forms of community supervision.[32]

Earlier this year, the Committee of Ministers of the Council of Europe adopted a recommendation containing a set of basic principles related to "ethical issues and professional standards enabling national authorities to provide just, proportionate and effective use of different forms of electronic monitoring in the framework of the criminal justice process in full respect of the rights of the persons concerned."[33]

Victim protection is also a very important aspect of this approach. In its draft recommendation to the Committee of Ministers, the European Committee on Crime Problems offered some principles to guide the use of electronic monitoring and noted that:

"Individual victims of specific crimes (such as victims of domestic violence, stalking or sexual assault) can in principle be protected (in the framework of victim-protection schemes) by particular configurations of electronic monitoring technology, all of which entail giving the victims an alarm which they carry on themselves and which simultaneously informs them and the police if a particular tagged offender comes within defined radius of proximity. (…) Current evidence from the USA suggests that former women victims of domestic violence, notwithstanding a degree of anxiety at the outset, derive benefit from well-run GPS tracking schemes used to protect them at the pre-trial stage."[34]

31 See: Justice Committee, House of Commons (2014). *Crime Reduction Policies: A co-ordinated approach? Interim Report on the Government's Transforming Rehabilitation Programme*, London, 22 January 2014.

32 National Institute of Justice (2011). *Electronic Monitoring Reduces Recidivism*. Washington, U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, September 2011. See also: Bales, W. et al. (2010). *A Quantitative and Qualitative Assessment of Electronic Monitoring.* A report prepared for the National Institute of Justice. Florida: Centre for Criminology and Public Policy Research, Florida State University.

33 Council of Europe, *Recommendation CM/Rec (2014)4 of the Committee of Ministers to member States on electronic monitoring*, (Adopted by the Committee of Ministers on 19 February 2014, at the 1192nd meeting of the Ministers' Deputies).

34 European Committee on Crime Problems, Ministers' Deputies, CM Documents, CM (2014)14 add2, 21 January 2014.

The Panel strongly recommends that the Province develop a comprehensive GPS electronic monitoring system to protect women and children who are victims of violence and to facilitate the treatment and reintegration of offenders in the community.

From a cost perspective, EM would seem to be an outright winner. One way of looking at this is to consider that a 600 person prison holding people on remand with its accompanying staff and physical plant could be replaced by ankle bracelets and a monitoring station with three shifts of two people per shift. Typically, EM is used in conjunction with an order that an individual either remain in their own residence or that they avoid certain locations, such as the home of a former spouse. Some US states are mandating that child molesters be monitored for indefinite periods to ensure they do not go to locations that children typically frequent.

A recent study by Yeh[35] in the United States strongly supports the value of EM. The costs of equipment and monitoring vary by the type of technology, the level of supervision and the vendor. According to Yeh, however, the cost of leasing a passive EM device for the Florida system is about $4 US per day per person. Personnel monitoring costs for active GPS systems are about $11.13 per day per person with an average total cost per person of about $19 US. He also reports that the cost of electronic monitoring of home detention in the UK was about £14 ($21.95) per offender per day. These values are not inconsistent with those experienced in Canada.[36] Yeh's conclusion is that, in the American context, there is a return of about $12.70 for every dollar spent on electronic monitoring.

Similar support for electronic monitoring is provided by Roman et al. in their cost-benefit analysis for Washington, DC.[37] The Roman study cites a broader set of advantages for EM. Included in these is the assertion that "EM reduces arrests by 24 per cent for program participants." Furthermore, it estimates that the "average number of arrests prevented per participant can be expected to generate $3,800 in societal benefits per participant." The total per participant cost for EM in Washington was about $750 with a range of $460 to $1,070. This resulted in saving of about $580 per participant for local agencies and $920 for federal agencies.

Canadian experience with electronic monitoring has been mixed. Some provinces such as B.C. have limited EM programs.[38] Currently, the largest program in Canada appears to be in Ontario where about 230 people are under EM supervision (Standing Committee on Public Safety and National Security, 2012). A Correctional Service of Canada (CSC) pilot project in 2008 proved problematic. Overall, it would appear that, given the relatively positive experience with EM in the United States and other jurisdictions, CSC's difficulties were related to an inadequate vetting of existing vendors and the application to small samples, which resulted in a low rate of amortization of the fixed costs associated with the system.

35 Yeh, S. (2010). "Cost-benefit analysis of reducing crime through electronic monitoring of parolees and probationers", *Journal of Criminal Justice*, 38: 1090-96.

36 Standing Committee on Public Safety and National Security (2012). *A Study of Electronic Monitoring in the Correction and Immigration Settings*. Ottawa: Library of Parliament: Parliamentary Information and Research Service.

37 Roman, J.K., A.M. Lieberman, S. Taxy and P.M. Downy (2012). *The Costs and Benefits of Electronic Monitoring for Washington, DC*. Washington, DC: The Urban Institute.

38 In fact, BC was the first jurisdiction in Canada to use EM when it introduced a pilot study in 1987.

The clear advantage of a GPS-based system is cost. Based on both the US and UK experiences, the cost of the equipment and the monitoring of offenders is under $25 per day. In British Columbia, the average daily cost of incarceration per person is about $215. Given that a high proportion of inmates are on remand (hence, not convicted), the use of EM would clearly be a significant financial benefit to the system. This is exclusive of other cost factors such as people's inability to support either themselves or their families while in prison.

REDUCING RECIDIVISM AMONG PRIORITY AND PROLIFIC OFFENDERS

A relatively small proportion of habitual or "career" criminals account for the majority of offences committed.[39] While there is variation across samples, most evidence supports the Pareto principle that about 80 percent of offences are committed by 20 percent of offenders.[40] In fact, it is likely that this 80:20 ratio is an underestimate due to experienced offenders' abilities to evade detection.

Using U.S. data, Cohen[41] estimated that "the average costs imposed on society by one male high-rate chronic offender is greater than $1.5 million." Among chronic female offenders, the cost was estimated to be more than $750,000. More recent estimates by Cohen and Piquero[42] suggest that averting a 14-year-old high risk offender from a lifetime of offending would save somewhere between three and five million dollars.

In estimating the costs associated with high risk offenders, Cohen notes that there are various components to be considered. Beyond the costs assumed by the individual offender (such as incarceration time), there are external costs and social costs. Economic externalities are costs that individuals bear inadvertently. For example, for a mugging victim, these would include the loss of possessions plus medical costs associated with the mugging, potential lost wages, pain and suffering. Social costs are related to externalities but include such factors as the loss of productivity among offenders, costs associated with treating drug addicts as well as costs associated with the criminal justice system.

There have been several police-based initiatives in this province, other parts of the country, the UK and other countries to focus on the management of priority and prolific offenders. They are referred to as "prolific offender management" (POM) or "priority and prolific offender management" (PPOM) programs. What these programs have in common is the identification of one or more cohorts of offenders in order to subject them to a more intensive supervision in the community. Generally speaking, these programs aim to reduce crime by dealing more effectively with a small number of offenders who are responsible for a large number of crimes, often property crimes.

39 Croisdale, T. E. (2007). *The Persistent Offender: A longitudinal analysis*. Ph.D. Dissertation, School of Criminology, Simon Fraser University.

40 Piquero, A. R., Farrington, D. P., and A. Blumstein (2003). "The criminal career paradigm". In M. Tonry (Ed.), *Crime and justice: An annual review of research* (Vol. 30). Chicago: University of Chicago Press.

41 Cohen, M. (1998). "The Monetary Value of Saving a High Risk Youth", *Journal of Quantitative Criminology*, 14: 5–33.

42 Cohen, M. A., and A. Piquero (2009). "New evidence on the monetary value of saving a high-risk youth", *Journal of Quantitative Criminology*, 25: 25-49.

There is quite a lot of variation in the way these programs are conceived and managed. However, there are several examples in this province and in other jurisdictions where the offender-focused approach to law enforcement has produced noticeable results. It can be applied to prolific offenders, but also to other groups of persistent offenders, such as domestic violence offenders, gang members, prolific property offenders, juvenile offenders and others for whom the risk of recidivism is high and a significant concern to the community. A wide range of labels is used to designate the offenders officially targeted by these initiatives, including chronic, persistent, priority and habitual offenders. These terms vary depending on the particular focus of the program.

Generally speaking, the offender management approach in question consisted of: selecting offenders, usually multi-recidivists; using clear selection criteria reflecting local crime reduction priorities; initiating contact with these offenders and engaging them in the initiative, keeping in mind that many of them are already under the care in one way or another of a correctional agency; assessing the individuals when an assessment has not already been conducted to identify their needs and risk factors; providing priority access and coordinating services to address the needs and risk factors; and active supervision of these offenders by police and correctional authorities. The local initiatives usually include as well the proactive supervision and policing of prolific offenders who do not participate in the program and their swift and effective prosecution as soon as they reoffend.

The experience acquired in B.C. in managing certain groups of prolific and priority offenders can pave the way to more comprehensive and systematized offender management strategies. Existing programs are far from perfect and their crime reduction outcomes have not always been validated.[43] However, they can be regarded as a promising practice that needs to be pursued. The next logical step is to build on that experience, expand the approach beyond the parameters of the initial programs and implement it systematically across the province with both a degree of consistency and enough flexibility to respond to local circumstances.

To date, the model has predominantly been applied to chronic property crime offenders, many of whom have a substance abuse problem. However, it can be used with any type of offender where there is a substantial risk of reoffending. For example, a Multi-Agency Preventative Program, involving a number of service providers as well as the police and other criminal justice agencies, is used with some significant results in the case of young offenders.[44] A similar approach to offender management is applied in various parts of Canada and in some parts of British Columbia to manage federal offenders released on parole where police, parole supervisors and dedicated prosecutors manage the offender's re-entry into society and work to reduce re-offending.[45]

43 For a critique of similar programs, see: Hopkins, M. and J. Wickson (2012). "Targeting Prolific and Other Priority Offenders and Promoting Pathways to Desistance: Some reflections on the PPO programme using a theory of change framework", *Criminology and Criminal Justice*, 13 (5): 594-614.

44 DeGusti, B., MacRae, L., Vallee, M., Caputo, T., and J. P. Hornick (2009). *Best Practices for Chronic/Persistent Youth Offenders in Canada: Summary Report*. Ottawa: Public safety Canada.

45 Axford, M and R. Ruddell (2010). "Police-parole Partnerships in Canada: A review of a promising programme", *International Journal of Police Science and Management*, 12 (2).

One can identify several major categories of offenders requiring the sustained and consistent attention of the criminal justice system to ensure that they desist from crime and do not reoffend. However, the Panel noted the frequent absence in existing programs of a rigorous and clear process for determining priorities. As a result, programs initially designated as "Prolific and Priority Offender Management" quickly drifted towards the most obvious group of prolific property offenders (typically dealing with a substance abuse problem). Going forward, it will be important to provide consistent guidance on how, at the local level, priorities can be set for identifying offenders subjected to the management program.

A preliminary assessment of Prolific and Priority Offender Management Programs operating in six British Columbia communities, using linked administrative data for services administered by health, justice and social services and analyzing pre-post changes in offender behaviour, indicated that the programs were associated with a significant decrease in recidivism, alongside significant increases in health and social service use.[46]

Research also shows that the most significant reductions in recidivism are associated with treatment programs that adhere to the well-established Risk/Needs/Responsivity (RNR) model of offender assessment and intervention. Although, as at least one researcher has noted, "the risks and needs of prolific offenders may be so diverse that the only thing that they have in common is their volume of crime."[47]

The Panel concludes that there is compelling evidence that this type of offender management approach is effective in preventing reoffending. However, efforts to fully implement such an approach have often met some significant obstacles, including a lack of effective coordination among service providers, law enforcement and other justice system agencies; the paucity of services available in the community; ineffective leadership; and a failure to address counter-productive attitudes and cultural factors.

Some offenders should be considered as priority offenders because they represent a risk of serious crimes (gang involved offenders, sexual offenders, child molesters, domestic violence offenders, offenders repeatedly involved in serious fraud and economic crime, etc.). From time to time these priority offenders may call for specific initiatives, coordinated across the province. There are many examples of programs that can help. For example, the Integrated Case Assessment Teams (ICAT) initiative, although designed for domestic violence, offers a problem solving method that can be adapted to any recurring crime issue for which interagency collaboration is needed.

46 Rezansoff, S., Moniruzzaman, A. and J. M. Somers (2013). *An Initiative to Improve Outcomes Among Prolific and Priority Offenders in Six British Columbia Communities: Preliminary Analysis of Recidivism,* Burnaby (B.C.): Faculty of Health Sciences, Simon Fraser University.

47 Idem, p. 3.

VIOLENCE AGAINST WOMEN IN RELATIONSHIPS

Effective action to prevent violence against women in relationships is one of the Province's major crime reduction priorities, and existing provincial policy provides a framework for action to reduce this type of crime and protect victims.[48] It emphasizes that supervision of the accused/offender by community corrections is critical for monitoring adherence to court imposed conditions and the management of risk and needs.

In high-risk cases, justice and child welfare personnel are expected to provide a heightened, coordinated and collaborative case management response that includes monitoring of the accused/offender and comprehensive safety strategies for the victim and others as appropriate. Effective supervision and enforcement of protective conditions are essential while the offender is serving a community-based sentence. When area restrictions and no-contact conditions are imposed, the use of GPS electronic monitoring should be an option, as part of a comprehensive victim safety strategy.[49]

VIOLENCE AGAINST CHILDREN AND YOUTH

Reducing violent crimes against children is another priority that must be integrated into a province-wide crime reduction strategy. Criminal justice institutions need to strengthen and focus their efforts to prevent and respond to violence against children and to increase their diligence in investigating, convicting and rehabilitating perpetrators of violent crimes against children, to effectively protect children.

Under the *Child, Family and Community Service Act* (CFCSA), child welfare workers may receive reports from anyone who has reason to believe a child or youth has been or is likely to be physically, sexually or emotionally abused and/or neglected. In these situations, child welfare workers must report allegations of child physical harm, sexual abuse and neglect to the police in accordance with existing protocols and collaborate on the investigation. The CFCSA also contains provisions for information sharing and sets the tone for what should be a very close cooperation between law enforcement and child protection agencies to prevent and reduce the incidence of violence against children.

It is important to take into consideration the complementary roles of the justice system on the one hand, and the child protection, social welfare, health and education sectors on the other, in creating a protective environment and in preventing and responding to violence against children. It is also important to ensure that decisions on the apprehension or arrest, detention and terms of any form of release of an alleged perpetrator of violence against a child take into account the need for the safety of the child and others related to the child through family, socially or otherwise, and that such procedures also prevent further acts of violence.[50]

48 Ministry of Public Safety and Solicitor General, Ministry of Attorney General, and Ministry of Children and Family Development (2010). *Violence against Women in Relationships: Policy*, December 2010.

49 See: *Violence against Women in Relationships: Policy*, "Appendix Two – Best Practices and Principles for Conditions of Community Supervision for Domestic Violence".

50 See: *United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice*, Vienna, UNODC, 2014.

In several of her reports and submissions, the Representative for Children and Youth highlighted the need for supervised bail orders that can effectively enhance victim safety by carefully monitoring the behaviour of the accused. She noted that improvements to bail supervision practices are necessary to enhance family safety. In domestic violence situations, any reported bail violation should receive an immediate enforcement response. Yet, there remain issues in this province with the enforcement of conditions attached to court orders and the way violations of bail conditions are currently dealt with. There are reported cases of serious violence against children related to the failure of the justice system to respond when breaches of bail conditions occurred. The Panel and the Representative for Children and Youth support the use of GPS-enabled electronic monitoring to help enforce protective conditions attached to bail supervision and probation orders.

SENTENCING AND PROLIFIC OFFENDERS

Short prison sentences applied to persistent offenders do not support desistance from crime. They are particularly ineffective in the cases of offenders dealing with severe substance abuse or mental illness issues. Yet short prison sentences are commonly imposed by the courts in a very large percentage of cases: the yearly median sentence length in 2012 was 51 days. Current sentencing patterns do not seem to achieve the objective of preventing recidivism. However, it would be unfair to blame the judiciary for failing to order more effective measures to prevent reoffending or encourage desistance from crime, particularly if they have very few effective alternative measures at their disposal.

> *"The Chief Judge of the Provincial Court recognizes Judicial Interim Release and sentencing as two fundamentally important points in the criminal justice process that provide opportunities to address such matters as liberty interests, public safety, proportionality and rehabilitation of individuals. Adequate resources and up to date information are critical to effective judicial decision making in these two areas."*
>
> **THOMAS CRABTREE**
> ***Chief Judge of the Provincial Court of British Columbia***

The Panel recommends that, in order to limit the unnecessary recourse to short prison sentences that have little if any effect on crime reduction, measures should be taken to ensure that judges have access to a variety of effective sentencing options, supported by credible and effective programs in all communities.

> *"Conditional sentences work because they minimize the collateral damage caused by a jail sentence: loss of employment, breakdown of families, increased poverty for wives, mothers and children. Conditional sentences also work because every day an individual with proper conditions is rewarded for behaving appropriately – he or she is permitted to remain in the community. Offenders know that if they don't respect their conditions they will be back in jail very quickly."*
>
> **RICHARD FOWLER**
> ***Barrister of Fowler and Smith***

It has become abundantly clear to the Panel that the current response to the chronic criminal behaviour of many prolific offenders is completely ineffective and fails to reduce crime in a way that meets with public expectations.

It seems to the Panel that the *Criminal Code* already contains provisions that allow courts to suspend a sentence of imprisonment of less than two years while an offender is meeting conditions set by the court, such as participating in a treatment program. The development of much broader integrated offender management supervision based on conditional prison sentences and strict enforcement of conditions is one of the avenues that should immediately be explored in collaboration with the judiciary and prosecutors as envisioned in section 742.1 of the *Criminal Code*.

An improved system to manage and render more effective conditional sentences, with real consequences for failure to abide by the conditions imposed by the court, could give correctional and law enforcement authorities an opportunity to help an offender desist from crime and allow them to monitor his/her progress, as some of the better POM programs have already managed to do in this province. The approach, if properly implemented, would have many of the benefits of problem solving courts without the added expenses of that solution and the further clogging of provincial courts. It would also allow the prolific offender management program to be implemented province-wide without having to rely on local and disjointed law enforcement initiatives.

> *"When considering the terms of conditional sentences and probation orders, it is important to tailor the terms to the service levels available in the community and with appropriate and certain consequences for non-compliance."*
>
> **LORI ACKERMAN**
> ***Mayor, The City of Fort St-John***

That enhanced system of conditional prison sentences should be primarily focused on the rehabilitation and social reintegration of offenders who are ready to desist from crime, rather than on punishment. It should be managed in a way that acknowledges that desistance from crime is a process, and that offenders are expected to have difficulties in complying with the court imposed conditions. To be effective, the system would have to more broadly implement an Integrated Offender Management approach. This would have the potential to radically transform the way Community Corrections operates.

In order to maximize the impact of community-based interventions as part of a sentence, where appropriate, and encourage offenders to desist from crime, the Ministry of Justice should consider proposing, at the federal/provincial/territorial level, amendments to the Criminal Code of Canada that increase the flexibility of judges to order conditional sentences of imprisonment and/or allow for a more effective utilization of suspended sentences and probation orders for chronic offenders.

In addition, in order for the enhanced conditional sentences system to be operationalized and get the desired results province-wide, the judiciary would have to be convinced that effective programs are in place to assist and supervise these offenders.[51]

Some stakeholders have suggested that, for conditional sentences to work as intended, judges may need to be more involved in a person's ongoing rehabilitation, with a requirement that the person report back to the sentencing judge on occasion during the term. This would serve to enhance the court's authority over the process and also serve to generally inform judges on the impact and outcomes of their decision to suspend a prison sentence.

51 For an international comparison of the use of conditional prison sentences, see: Armstrong, S., McIvor, G., McNeill, F., and P. McGuinness (2013). *International Evidence Review of Conditional (suspended) Sentences: Final report.* Edinburgh, Scotland: The Scottish Centre for Crime and Justice Research. See also: Bewley, H. (2012). *The Effectiveness of different Community Order requirements for Offenders who Received an OASys Assessent.* London: Ministry of Justice Research series 17/12, October 2012.

Appendix E: *Mental Health and Addiction Issues*

Assisting Offenders with Addiction Issues

SUBSTANCE ABUSE AND CRIME

The evidence is clear: a high proportion of criminal activity is related to substance abuse, either directly or indirectly.[52] A significant proportion of addicts are not gainfully employed which means that criminal activity becomes a primary source of revenue to support their habit. Addicts are typically volume offenders since they require a constant supply of their substance of choice. Consequently, they must either provide a high rate of service (as in the case of sex trade workers), engage in the marketing of illegal substances (drugs as a pyramid scheme), or steal large amounts of "cash" or even larger amounts of commodities.

Commodities are particularly costly for the victim since offenders typically get less than 10 per cent of the market value of a stolen item from a fence. Consequently, from the victim's perspective, substance abuse is a particularly costly activity. Depending on the type of substance they are using, offenders can spend anywhere from $70 to $1,000 per day; supporting that habit through stolen property would require an addict to obtain merchandise at about 10 times that value.

THE SOCIAL COSTS OF DRUG USE

In Canada, there is no recent data on the national costs of illegal substance use. However, data gathered a decade ago by the Canadian Centre on Substance Abuse estimated the cost in 2002 at about $8.2 billion.[53] It is reasonable to assume that the costs today are substantially higher. According to that study, law enforcement costs account for about $2.3 billion while direct health care costs account for about $1.1 billion. The social costs associated with drug use, such as the loss of productivity, accounted for about $4.6 billion.

A large portion of those costs is underwritten by social welfare budgets. When broken down by province, the study estimated that the total cost of illegal drugs in British Columbia was approximately $1.5 billion. This translates to about one per cent of provincial GDP.

The biggest single cost was borne by the health care system with law enforcement second. Rhem and his colleagues generated costs based on the population of the province at $364 per capita. For our purposes, however, a more useful estimate would be *per drug user*. Unfortunately, we were unable to find any such estimates for either B.C. or elsewhere in Canada.

52 While the focus here is on the use of illicit drugs, some authors (e.g., Miller et al., 2006) note that crimes attributable to alcohol appear to have twice the costs associated with them when compared with drugs.

53 Rehm, J. et al. (2008). *The Costs of Substance Abuse in Canada, 2002*. Ottawa: Canadian Centre on Substance Abuse.

> *"The three conditions (namely abstinence, improved personal health and improved citizenship) that define recovery are measurable entities. Healthcare systems fail completely to recognize or even acknowledge that literally millions of people have successfully accomplished these three objectives since the 1930s."*
>
> **DR. MICHAEL O'MALLEY**
> ***Prince George***

As with overall crime rates, recent patterns show a slight downturn in the use of drugs and alcohol in Canada. While legal, alcohol is considered by many in the field to pose a greater social cost than the use of illicit drugs.[54] According to the 2011 Canadian Alcohol and Drug Use Monitoring Survey (CADUMS), rates of alcohol consumption in British Columbia are slightly lower than the rest of Canada while rates of illicit drug use are higher.[55] Still, about 12.1 per cent of the B.C. population exceeds the threshold for *chronic* low-risk drinking guidelines[56], and 7.1 per cent exceed the threshold for *acute* low-risk drinking.[57]

As for illicit drugs, 12.1 per cent of the population reported having used cannabis in the past year. A total of 13.8 per cent of British Columbians report having used at least one illicit drug in the past year.[58] Due to small sample sizes, it is difficult to generate an accurate estimate for the proportion of the population that have experienced a social harm as a consequence of illicit drug use.[59]

At the national level, however, it is estimated that about 1.8 per cent of the population experienced some form of social harm from their drug use in the past year. Among drug users, however, 17.6 per cent of the national population report their drug use resulting in some form of social harm in the past year. Restricting the sample to those who use cocaine, speed, hallucinogens including salvia, and ecstasy or heroin, results in 46.1 per cent reporting their drug use has resulted in a social harm. While these are national figures, it is unlikely that the results for British Columbia will differ substantially.

54 Nutt, D. J., King, L. A. and L. D. Phillips (2010). "Drug harms in the UK: Multicriteria decision analysis", *The Lancet*, 9752: 1558 – 1565; Thomas, G. and C. G. Davis (2007). *Comparing the Perceived Seriousness and Actual Costs of Substance Abuse in Canada*. Ottawa: Canadian Centre on Substance Abuse.

55 See *http://www.hc-sc.gc.ca/hc-ps/drugs-drogues/stat/_2011/tables-tableaux-eng.php#t2* for a summary of results.

56 The low-risk threshold for chronic alcohol consumption is defined as "People who drink within this guideline must drink no more than 10 drinks a week for women, with no more than 2 drinks a day most days and 15 drinks a week for men, with no more than 3 drinks a day most days."

57 Here, the low-risk threshold for acute alcohol consumption is defined as "Those who drink within this guideline must drink no more than 3 drinks (for women) and 4 drinks (for men) on any single occasion. Plan to drink in a safe environment. Stay within the weekly limits outlined in Guideline 1".

58 These include: cannabis, cocaine/crack, meth/crystal meth, ecstasy, hallucinogens, salvia, inhalants, heroin; abuse of pain relievers, stimulants; sedatives to get high.

59 "Drug related harms include harms in any of the following 8 areas: physical health; friendships and social life; financial position; home life or marriage; work, studies or employment opportunities; legal problems; difficulty learning; and housing problems."

Needless to say, the CADUMS findings are weakened by the fact that many users are either not captured by the survey, refuse to answer or underestimate their consumption.

While alcohol abuse is not illegal in itself, it obviously contributes significantly to criminal behaviour particularly with regard to motor vehicle incidents and assault (domestic and otherwise).

QUALITY ADDICTION TREATMENT CAN PREVENT CRIME

There is evidence that individuals who complete a therapeutic community program in custodial centres have a lower rate of recidivism and drug use and higher likelihood of successful social reintegration. For example, according to a preliminary impact analysis, offenders who completed the program offered through the Guthrie House Therapeutic Community pilot program at Nanaimo Correctional Centre reoffended significantly less than those who did not complete the program (38 per cent, compared to 56 per cent for the control group).[60]

The argument is often made that effective addiction treatment programs cannot be offered in a custodial setting when the sentence served is very short. There is however some evidence that short-term intensive drug treatment (particularly if it is followed up with psycho-social support during the re-entry process) can produce desirable outcomes and limit future recidivism.[61] There remains also the question of the role of offender motivation in rehabilitation and reintegration which, in many instances, may play a more prominent role in the success of drug treatment than the treatment itself.[62]

People in recovery have fewer problems and commit fewer crimes than people who are in active addiction.[63] Treatment cuts crime and improves public safety. The lack of available treatment has huge costs and affects public safety.

It is important to divert non-violent drug offenders into treatment and offer effective re-entry programs. Treatment in custodial institutions must be enhanced and made more effective.[64] Some important changes in current practices are necessary and the Ministry of Health has an important role to play.

60 Gress, C. L. Z. and S. Arabsky (2010). *Therapeutic Community – Preliminary Impact Analysis*. Victoria: B.C. Corrections, Performance, Research and Evaluation Unit.

61 See, for example: Bahr, S. J., Harris, P. E., Strobell, J. H., and B. M. Taylor (2013)."An Evaluation of a Short-term Drug Treatment for Jail Inmates", *International Journal of Offender Therapy and Comparative Criminology*, 57 (10): 1275-1296. See also: Bahr, S.J., Masters, A.L., and B. M. Taylor, B.M. (2012). "What works in substance abuse treatment programs for offenders?", *The Prison Journal*, 92 (2): 155-174.

62 See: Gideon, L. (2010). "Drug offenders' perceptions of motivation: The role of motivation in rehabilitation and reintegration", *International Journal of Offender Therapy and Comparative Criminology,* 54 (4): 597-610.

63 Laudet, 2013, *Life in Recovery – Survey Findings*. For a discussion of the concept of "recovery", see also: The Betty Ford Institute Consensus Panel (2007). "What is Recovery? A working definition from the betty Ford Institute", *Journal of Substance Abuse Treatment*, 33: 221-228.

64 National Institute of Drug Abuse (2012). *Principles of Drug Abuse Treatment for Criminal Justice Populations*. Also: National Institute of Drug Abuse (2012), *Principles of Drug Addiction Treatment – A research-based Guid*e.

Drug addiction is a chronic disease of the brain that can be prevented and treated. The goal of treatment should be recovery, and funds should be directed towards this. The recent report of the House of Commons Standing Committee on Health mentioned that the general public, health care professionals and law enforcement officials lack knowledge and awareness of addiction as a chronic disease of the motivational system in the brain, as well as the role of opioid substitution therapy in its treatment. This lack of awareness of addiction as a brain disease means that individuals who become addicted to prescription drugs and other substances experience negative judgements from others and feel ashamed of their illness. In order to address this issue, the Committee recommended a public awareness campaign to both raise awareness of the nature of addiction and celebrate stories of recovery.[65]

We need to commit to an approach based on science, evidence and research. Treatment can help patients addicted to drugs stop using, avoid relapse and successfully recover their lives. People can recover and contribute to our communities. We are not currently doing a good job of breaking the cycle of drug use, crime, arrest and incarceration. We need to focus on treatment and recovery.

The relationship between substance use and crime drives significant social and health costs at all levels. Untreated, active addiction has huge human, social and financial costs. Treatment is not evenly distributed in British Columbia nor does it always provide an entire continuum of responses. Those involved with the criminal justice system often have lower access to services. Treatment needs to be readily available to all (as a crime prevention measure) and in particular to offenders.

HARM REDUCTION

Harm reduction strategies seek to minimize the adverse health and social consequences associated with drug use. Over the years various harm reduction programs have been implemented such as needle exchanges, methadone maintenance programs and supervised injection sites. This approach recognizes that, at any given time, many drug users are unable or unwilling to abstain from drug use and that other options are necessary to minimize the harm to themselves and others that will likely result from their continued drug use.

Some harm reduction strategies are highly controversial and the Panel had first-hand opportunities to observe how polarized and emotional this particular aspect of prevention policies has become. In that regard, the Panel would like to quote the thoughtful conclusions of a paper on "harm reduction" published by the Canadian Centre on Substance Abuse:

65 Report of the Standing Committee on Health (2014). *Government's Role in Addressing Prescription Drug Abuse*. Ottawa: House of Commons Canada.

"Drug abuse and addiction are truly chronic, multifaceted societal problems that require a range of policies, programs and interventions. However reasonable or objectionable certain measures may be to some people, our collective endorsement of specific programs should be based on objective, scientific evidence of effectiveness, with an appreciation of the intent of the intervention and whether it is the best course of action for specific problems. We should neither unilaterally accept nor reject measures because of where they fit within our ideological perspective or because of the way the term "harm reduction" colours our perceptions of their intent."[66]

A VARIETY OF TREATMENT OPTIONS MUST BE MADE AVAILABLE

No single treatment is appropriate for everyone. Treatment options must be made available. It should be clear also that medically assisted detoxification is only the first stage of addiction treatment and, by itself, does little to change long-term drug abuse.

> *"I would like to re-emphasize my support for what the Panel has deemed to be a "gap" and that is the lack of psycho-social support available to individuals in treatment or in follow-up."*
>
> **P. R.W. KENDALL**
> ***Provincial Health Officer***

Effective treatment attends to multiple needs of the individual, not just his or her drug misuse. Medications are important for managing the physical aspects of addictions. Completing a treatment program is one of the most important factors for long-term sobriety. Medication may help individuals dealing with withdrawal symptoms, support them to enter treatment at an early stage, and in some cases increase the chance that they will complete treatment phases.

Particularly crucial is the need to provide individuals in treatment or recovery with the psycho-social support they need for their effective social reintegration. The gaps in the availability of such services throughout the province are quite evident.

DRUG TREATMENT: COSTS AND BENEFITS

Often, we hear two arguments against the expansion of drug treatment programs. The first is that they are simply too expensive and we cannot afford them. The second is that these programs tend to have low success rates. Both experience and the scientific literature suggest these arguments are not valid. Despite its up-front costs, treatment is highly cost-effective in the long run. Treatment programs, despite having less than ideal success rates, are successful for a significant proportion of those afflicted with substance abuse disorder.

66 Beirness, D. J., Jesseman, R., Notarandrea, R., and M. Perron (2008). *Harm Reduction: What's in a Name?* Ottawa: Canadian Centre on Substance Abuse.

Clearly, substance abuse is an expensive societal issue. Drug treatment is also an expensive enterprise. This raises the immediate question as to whether treatment is worth the cost. According to the US National Institute on Drug Abuse, "every dollar invested in addiction treatment programs yields a return of between $4 and $7 in reduced drug-related crime, criminal justice costs, and theft. When savings related to healthcare are included, total savings can exceed costs by a ratio of 12 to 1."[67]

Drug treatment programs vary considerably in cost by modality and location. According to the National Institute on Drug Abuse, the cost of methadone maintenance in the US is about $4,200 US per person per year. The retail cost of methadone in Canada is about $6 plus dispensing fees, which are typically less than $10. On an annual basis, the dispensing cost of methadone in Canada is about equivalent to that in the US. Not covered in this estimate are physicians' fees to supervise the addict.

While methadone maintenance programs are appropriate for many individuals, they have limitations. First, many addicts who do not have subsidiary treatment support remain dependent on methadone for years rather than weaning off the substance. Second, many drug users become cross-addicted and complement their methadone intake with other substances such as cocaine or amphetamines.

Several EU countries have detoxification and treatment programs as an extension of their national health care systems.[68] Information on actual daily costs is limited but for inpatient detoxification, the cost in England is about £165 or $300 per day. For Germany, the equivalent is about €247 ($375 CDN) per day. The costs of psycho-social treatment vary greatly depending upon the treatment, but estimates for the UK range from €59 to €288 ($89 to $436) per day. Other countries such as Norway are at the upper end of that range for inpatient treatment. These values contrast with many private clinics in the US and Canada which often charge $1,000 per day or more.

A big question concerning drug treatment is the degree to which it is successful. Despite years of research, it is not at all clear what constitutes an optimal treatment program or how long that program should last. Hard data are sparse and, for many programs, nonexistent. Part of this is understandable since there are many different treatments and matching treatment modality with an individual's diagnosis is difficult. Furthermore, many if not most addicts have a multiplicity of social issues that confound their attempts to remain drug-free.

In this morass, the Guide to Substance Abuse Services for Primary Care Clinicians provides perhaps the best synopsis of what we might expect.[69]

67 *http://www.drugabuse.gov/publications/principles-drug-addiction-treatment-research-based-guide-third-edition/frequently-asked-questions/drug-addiction-treatment-worth-its-cost*

68 European Monitoring Centre for Drugs and Drug Addiction (2011). *Cost and Financing of Drug Treatment Services in Europe: An Exploratory Study*. Luxembourg: Publications Office of the European Union.

69 Center for Substance Abuse Treatment (2008). *A Guide to Substance Abuse Services for Primary Care Clinicians.* Rockville, MD: US Department of Health and Human Services.

All the long-term studies find that "treatment works" — the majority of substance-dependent patients eventually stop compulsive use and have less frequent and severe relapse episodes. The most positive effects generally happen while the patient is actively participating in treatment, but prolonged abstinence following treatment is a good predictor of continuing success. Almost 90 per cent of those who remain abstinent for two years are also drug and alcohol free at 10 years. Patients who remain in treatment for longer periods of time are also likely to achieve maximum benefits: treatment lasting for three months or longer is often a predictor of a successful outcome. Furthermore, individuals who have lower levels of premorbid psychopathology and other serious social, vocational and legal problems are most likely to benefit from treatment. Continuing participation in aftercare or self-help groups following treatment also appears to be associated with success.

Returning to our original question of whether the cost of treatment is *economically* efficient, it is worthwhile considering the estimated lifetime costs associate with drug violators. From their analysis, Delisi and Gatling estimated the average *annual criminal justice cost* per offense per career criminal at $208,000 US. This does not include externalities and social costs, which most will likely double this value. Compared with this, a $25,000 treatment program seems like a bargain.

There are a few international reviews of the cost-effectiveness of treatment programs, but none that we could find for Canada. The most recent and comprehensive review in North America is that by Belenko, Patapis and French.[70] In summary, they reviewed 99 treatment programs and concluded the following (Belenko, Patapis and French, 2005: v; all figures in 2004 US dollars):

- Across 99 programs, the costs per abstinent case ($6,300) and per reduced drug use case ($2,400) were lowest for outpatient clients, and highest for residential ($14,900 and $6,700) and inpatient ($15,600 and $6,100) clients.
- Enhanced outpatient services were more cost effective than standard services. In other words, the extra cost of enhanced services yielded a lower cost per unit improvement in outcomes.
- In a randomized trial, the incremental cost effectiveness of methadone maintenance versus 180-day methadone detoxification was $15,967 per life-year gained, well within the standard accepted threshold of $50,000 per life-year gained.
- For alcohol-involved clients, studies suggest that less intensive brief interventions may be more cost effective in certain settings.
- Several CEA studies of correctional treatment concluded that residential prison treatment was cost effective only if aftercare services were completed. [It was also] found that cost effectiveness was greater for high-risk inmates who receive prison treatment plus aftercare.

70 Belenko, S., Patapis, N. and M.T. French (2005). *Economic Benefits of Drug Treatment: A critical review of the evidence for policy makers*. Philadelphia: Treatment Research Institute at the University of Pennsylvania.

In the United Kingdom, the National Treatment Agency for Substance Misuse, the Home Office and the Department of Health developed a Value for Money model for estimating the crime prevention and health improvement benefits of treatment and recovery.[71] They estimated that drug treatment and recovery systems in England may have prevented approximately 4.9 million crimes in 2010-11, with an estimated saving to society of £960 million in costs to the public, businesses, the criminal justice system and National Health Service. The model also helped estimate the potential impact of disinvestment in adult drug treatment: it concluded that, all else being equal, for every £1 million taken out of the system there could be an increase of approximately 9,860 drug-related crimes per year at an estimated cost to society of over £1.8 million.

After reviewing the literature on cost-benefit analysis of drug treatment, the LSE Expert Group on the Economics of Drug Policy suggested that there is an average benefit-to-cost ratio of about 8.9.[72] Furthermore, as the World Health Organization notes,

"According to several conservative estimates, every dollar invested in opioid dependence treatment programmes may yield a return of between $4 and $7 in reduced drug-related crime, criminal justice costs and theft alone. When savings related to health care are included, total savings can exceed costs by a ratio of 12:1."[73]

Essentially, we cannot afford not to expand our treatment efforts.

METHADONE MAINTENANCE TREATMENT

The Panel recognizes that there is a place for Methadone Maintenance Treatment (MMT) in the range of treatment options.

The University of Victoria Centre for Addiction Research review of the "Methadone Maintenance Treatment in British Columbia, 1996-2008" recommended a "coordinated approach to MMT funding that ensures value for money is being achieved, fiscal irregularities or abuses are addressed and a multidisciplinary system is supported."[74]

A comprehensive qualitative review of B.C.'s methadone maintenance treatment program (from the perspective of a wide variety of stakeholders directly or indirectly involved in the program) mentioned the need to dramatically ramp up the capacity for services to respond more effectively to the range of health and social problems experienced by MMT clients. In particular, integrated services critical to addressing complex needs were reported to be rare.[75]

71 National Treatment Agency for Substance Misuse (2012). *Estimating the Crime Reduction Benefits of Drug Treatment and Recovery*. London: NHS.

72 LSE Expert Group on the Economics of Drug Policy (2014) Ending the Drug Wars. London: London School of Economics.

73 World Health Organization, Joint UN Programme on HIV/AIDS (UNAIDS) and UN Office on Drugs and Crime. 'Position Paper: Substitution Maintenance Therapy in the Management of Opioid Dependence and HIV Prevention,' Geneva, United Nations, 2004.

74 Reist, D. (2010). *Methadone Maintenance Treatment in British Columbia, 1996-2008*. Victoria: University of Victoria, Centre for Addiction Research, p. 2.

75 Parkes, T. and D. Reist (2010). *British Columbia Methadone Maintenance Treatment Program: A Qualitative Systems Review*. Victoria: Centre for Addictions Research, University of Victoria.

The authors of that report refer to the potential to engage offenders on MMT while in corrections settings as something desirable, because it offers "important public health possibilities." They also identified issues with the delivery of methadone treatment in prisons:

"Despite progress, problems for people accessing methadone in correctional settings still exist. Identified issues include: unpredictability in responding to people currently enrolled in MMT; poor access to methadone when the person was already stable on a regular dose; unclear policies and guidelines around methadone access and distribution; challenges in initiating methadone in provincial corrections settings because a person's stay is often very short; and an anti-methadone sentiment amongst some corrections staff, including some physicians and nurses". [76]

The review also noted that:

> *"Correctional facilities can be a very difficult place for people on MMT. It is widely acknowledged that illegal drugs are available within the prison system, and so the proximity and accessibility of heroin may be a difficult temptation to resist. Methadone may be used as a currency in corrections settings, being diverted and traded. Methadone patients may be pressured or bullied by other inmates to divert their methadone, yet may be punished by prison staff if they are discovered doing so".* [77]

The Panel also noted that an opioid replacement treatment program is widely used within federal correctional institutions with provisions for continued access to treatment after the offender's release.

> *"What do we mean by recovery? We mean a process through which an individual is enabled to move on from their problem drug use, towards a drug-free life as an active and contributing member of society. Furthermore, it incorporates the principle that recovery is most effective when service users' needs and aspirations are placed at the centre of their care and treatment."*
>
> **THE SCOTTISH GOVERNMENT (2008).** ***The Road to Recovery – A New Approach to Tackling Scotland's Drug Problem.*** **EDINBURGH.**

Many of the clients of the MMT program experience concurrent health and social needs requiring a range of services and supports. Mental illness, physical injury and disability, diabetes and neurocognitive disorders were described as common among clients of the provincial program. Many have a history of violence and complex trauma.[78]

76 Idem, p. 18.
77 Idem, p. 19.
78 Idem, p. 4.

PROMOTING RECOVERY

Recovery should be the explicit aim of services for offenders with addiction issues in British Columbia. Although in practice recovery will mean different things for different people, it should be encouraged as an achievable goal for offenders, directly related to their eventual complete desistance from crime.

Some studies have examined whether drug users are looking to treatment to reduce their risk behaviour or to become abstinent from their drug use. One such study, based on a survey of 1,007 drug users starting a new episode of treatment, established that there was widespread support for abstinence as a goal for treatment with 56 per cent of users identifying 'abstinence' as the only change they hoped to achieve on the basis of attending the drug treatment program.[79] Only relatively small proportions of drug users identified harm reduction as their aspiration from treatment.

This prioritization was consistent across settings (prison, residential and community), gender, treatment type (with the exception of those receiving methadone) and severity of dependence. The Panel's meeting with chronic offenders in recovery revealed similar views and aspirations from treatment amongst these individuals.

> *"Treatment and recovery are complementary. Ongoing support and continuing care are essential parts of a comprehensive, evidence-based, treatment system."*
>
> **MICHEL PERRON**
> ***Former Chief Executive Officer Canadian Centre on Substance Abuse***

Using the definition adopted by the Scottish government, recovery refers to a process through which individuals are enabled to move from their problem drug and alcohol use, towards a drug-free and alcohol-free life as an active and productive member of society.[80]

The Panel recommends that measures be urgently taken to enhance access to effective substance abuse treatment programs focused on sustainable long-term recovery.

79 McKeganey, N., Morris, Z., Neale, J. and M. Robertson (2004)."What Are Drug Users Looking for When They Contact Drug services: Abstinence or Harm Reduction?" *Drugs: Education, Prevention and Policy,* 11 (5): 423-435.

80 The Scottish Government (2008). *The Road to Recovery – A New Approach to tackling Scotland's Drug Problem*. Edinburgh.

We recognize that access to treatment and recovery programs cannot be improved without reconsidering current methods of funding and ensuring that consistent, evidence-based standards are developed and attached to all relevant provincial funding schemes. There is a need also to invest in training physicians and other allied health professionals in the prevention, early identification and treatment of alcohol and drug addiction. As part of this, investments are also required to develop provincial standards and therapeutic guidelines for the treatment of alcohol and drug addiction aimed at supporting patients into recovery.

ACCREDITATION OF PROGRAMS

Many of the stakeholders consulted emphasized the need for a consistent and coherent evidence-based accreditation system for community-based treatment and recovery programs. There should be an inventory of existing programs and facilities in each health region and an assessment of the services they offer against national standards.

Accreditation of an addiction treatment centre refers generally to a quality assurance process whereby the centre is assessed against national standards of excellence. These standards measure clinical, operational and governance-based performance. The accreditation process can establish the extent to which a centre complies with national standards and measure the quality of services that clients receive.[81] It does not usually prescribe a particular approach to offering addiction treatment.

Many stakeholders also expressed concerns about the abuses that take place in unlicensed recovery houses and their sometimes disruptive and negative impact on communities. The Panel suggests that a taskforce be convened by the Province involving relevant government ministries, the Canadian Association for Substance Abuse, members of the Union of BC Municipalities, the BC Association of Chiefs of Police and health authorities to examine effective means of addressing this issue without damaging the fragile web of community-based treatment and recovery services.

> *"Putting resources into evidence-based strategies that can improve rates of recovery from addiction has the potential to dramatically reduce crime and improve public safety. However, creating an effective system will require training addiction treatment providers and setting guidelines and standards that have for too long been absent in the area of addiction care."*
>
> **DR. EVAN WOOD**
> ***Canada Research Chair in Inner City Medicine,***
> ***UBC Medical Director, Addiction Services Vancouver Coastal Health***

81 Health Canada, Assembly of First Nations, and the National Native Addictions Partnership Foundation (2011). *Honouring Our Strengths: A Renewed Framework to Address Substance Use Issues among First Nations People in Canada*. Ottawa: Health Canada, p. 92.

ACCESS TO TREATMENT BY ABORIGINAL OFFENDERS

The Panel heard that the best programs for Aboriginal offenders with substance abuse problems are Aboriginal-led, recognize the importance of cultural identity and self-determination, and integrate traditional knowledge and the wisdom of elders with non-Aboriginal approaches.[82] They must be grounded in an understanding of the close relationship between mental health, addictions and inter-generational trauma.

In First Nations and remote communities, access to a continuum of care for offenders with mental illness or substance abuse problems continues to be an issue. First Nations people access substance use and mental health-related services from various sectors throughout the health care system, as well as various other systems and sectors, including social services, child welfare, justice, housing, education and employment. Substance abuse treatment programs are also offered by the federal government.[83]

The Panel is not in a position to comment on the quality of the substance abuse and mental health programs available to Aboriginal people in B.C. or on whether they are accessible in a timely manner by Aboriginal offenders seeking help to support their own recovery process. However, the Panel has certainly heard about the need to integrate existing programs and facilitate access to them. As was acknowledged in a report prepared by Health Canada, the Assembly of First Nations and the National Native Addictions Partnership Foundation, with diverse systems and increasingly complex needs, the challenge for communities and service providers is to coordinate a broad range of services and supports to ensure First Nations have access to a comprehensive client-centred continuum of care.[84]

82 See also: Mental Health Commission of Canada (2009). *Toward Recovery and Well-being – A Framework for a Mental Health Strategy for Canada.* Ottawa: Mental health Commission of Canada, p. 18.

83 In particular, the First Nations substance use issues are addressed through the National Native Alcohol and Drug Abuse Program (NNADAP).

84 Health Canada, Assembly of First Nations, and the National Native Addictions Partnership Foundation (2011). *Honouring Our Strengths: A Renewed Framework to Address Substance Use Issues among First Nations People in Canada*. Ottawa: Health Canada.

Appendix F

Meaningful and Effective Diversion and Restorative Justice Programs

The purpose of diversion is to address the factors associated with the risk of reoffending by providing immediate and effective interventions without submitting the offender to the whole criminal justice process. For some offenders, a formal criminal sanction is neither necessary nor useful to facilitate their social integration and prevent reoffending. Other more effective and less stigmatizing interventions are possible in the community, including diversion programs that redirect offenders from the criminal justice process to other, more appropriate, interventions.[85]

Diversion programs are based on the discretionary authority of criminal justice officials, such as the police and prosecutors, to refer offenders to suitable programs as an alternative to the criminal justice process. In appropriate circumstances, and in particular for young offenders or people suffering from mental illness or substance abuse disorders, diversion programs can ensure that offenders receive the most suitable and effective interventions while avoiding unnecessary exposure to a prison environment.

However, it should be obvious that diversion is an effective option only to the extent that credible and effective community-based interventions to which offenders can be diverted are present in a given community. It should be equally obvious that officials are unlikely to support diversion unless they can rely on credible offender assessments, up-to-date information on available programs, clear criteria on which to base their decisions and regular feedback on the success of the interventions offered.

In his report to the Minister of Justice, Geoffrey Cowper recommended a province-wide plan for diversion, including restorative justice, be developed to include education, quality assurance and control, performance measures, reporting and evaluation.[86] The Panel reiterates that recommendation.

85 The *United Nations Standard Minimum Rules for Non-Custodial Measures* state that the development of new non-custodial measures should be encouraged and closely monitored (Rule 2.4). It is also stated that consideration should be given to dealing with offenders in the community, avoiding as far as possible the use of formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law (Rule 2.5). The development of a wide range of community-based measures is also advocated. The *Bangkok Rules* advocate the same for women offenders.

86 Cowper, D. G. (2012), *A Criminal Justice System for the 21st Century, Final Report to the Minister of Justice and Attorney General Honourable Shirley Bond*, Victoria, August 27, 2012, p. 12.

The Justice and Public Safety Council's Strategic Plan acknowledges the need to address the following performance gap: "Coordinated efforts are required to ensure appropriate triage of mentally-disordered individuals, including adequate accommodation and treatment availability". The plan encourages everyone to work across all levels of government to understand and address root causes of crime, and to support and participate in effective alternative interventions and innovation. Success could be measured in terms of reducing the "proportion of provincial inmates with diagnosed (a) major mental disorders and (b) substance dependency."[87]

It is important to move towards integrated planning, delivery and evaluation of services to reduce the risk that people with substance abuse and mental disorders become unnecessarily involved with the corrections system.[88]

The Panel heard a lot of support expressed in various communities for a proactive approach to the management of mentally ill offenders in the community. Examples of the King Street Mental Health Clinic and the Street Nurse Outreach Clinic, both in Kamloops, were very encouraging. A lot of support was expressed for the Ministry of Health "Assertive Community Treatment" (ACT) teams and the importance of supportive housing was emphasized.

It needs to be understood that the typical short stay in custody (i.e. less than 60 days) is an expensive intervention that is unlikely, in most cases, to have a significant effect on subsequent offending (desistance) and does not contribute in any significant way to crime reduction. A large number of individuals in provincial correctional institutions arrived there with a multiplicity of issues and needs which could be more effectively dealt with in other ways.

An integrated offender management initiative should have, as one of its objectives, the development and use of various alternatives to the criminal justice system (and to imprisonment). This would include enhancing diversion to restorative justice programs, addiction treatment and recovery programs, and mental health care and treatment. The goal would be to reduce the numbers of individuals in provincial corrections facilities, particularly those given short sentences that do not contribute in any meaningful way to their eventual desistance from crime.

The community has an important role to play. Most offenders considered for diversion programs face significant social adaptation issues, which can include family and community stigmatization and ostracism, and the ensuing negative impact on their ability to find jobs or housing, return to formal education or build or rebuild individual and social capital. Unless they receive help to face these issues, they frequently become caught up in a cycle of failed social integration, reoffending, reconviction and social rejection. Communities need to understand and accept the importance of ensuring the successful reintegration of offenders and take active steps to facilitate that process.

As a matter of priority, clear provincial guidelines should be established and enforced to encourage diversion to accredited treatment and recovery programs and other meaningful interventions.

87 JPSC Strategic Plan, 2013, p. 20.

88 Julian Somers et al. (2008), "Corrections, Health and Human Services".

DIVERSION PROGRAMS FOR ABORIGINAL OFFENDERS

Statistics show that Aboriginal people continue to be over-represented in the justice system as both offenders and victims. Effective diversion programs for them are particularly important and currently insufficient. It is important to focus on developing those alternatives in cooperation with Aboriginal communities. The Justice and Public Safety Council's Strategic Plan proposes to address the following performance gap: "Meaningful options need to be available to courts in support of alternatives to incarceration consistent with *R v* Gladue." A proposed performance measure is the rate of Aboriginal incarceration as a result of a sentence.

A recent study conducted in New South Wales, Australia, identified some of the characteristics of diversion programs for Aboriginal offenders that seem to be more promising. Among them were programs involving on-the-job work experience, mentoring, and culturally appropriate treatments and rehabilitation initiatives that involve Aboriginal elders and facilitators.[89]

Such programs already exist in different parts of the province. In Williams Lake, the Community Justice Program administered by the Alkali Lake Indian Band utilizes restorative justice processes as a culturally appropriate and traditional way in balance with the legal system. The interventions include, among others, alternative measures and extrajudicial sanctions for both youth and adults, a responsible relationship program, and victim-offender mediation.

CORRECTIONAL PROGRAMS

According to BC Corrections, more than two-thirds of offenders in 2012 had been previously involved in the criminal justice system; 40 per cent of these offenders had a history of 10 or more convictions, and five per cent had 24 or more convictions within 10 years. (Data on the 2012 sentenced population was traced back over 10 years to identify offenders with repeated convictions that were supervised by BC Corrections.)

A large proportion of offenders go through the provincial corrections system often for relatively minor crimes, serving successive and relatively short terms of imprisonment. Although the crimes in which they are involved are relatively less serious, primarily small property crimes, the impact of these repeat offenders on communities and public safety, as well as public confidence in the justice system, is substantial.

Much of their behaviour can be linked to substance abuse and addictions, mental disorders, lack of job skills and other issues. Because they tend to serve short-term sentences, their access to treatment and other programs while in detention is quite limited and they remain at high risk of reoffending. None of this cycle of meaningless interventions makes any difference in terms of crime reduction.

89 Closing the Gap Clearinghouse (2013). *Diverting Indigenous Offenders from the Criminal Justice System.* Canberra, Australia: Australian Institute of Health and Welfare.

> *"The correctional system offers a critical opportunity to facilitate access to life saving infectious disease and drug use treatment by inmates in the interest of optimizing their own health outcomes, as well as public health outcomes, in a cost effective fashion."*
>
> **DR. J. MONTANER**
> ***BC Centre for Excellence in HIV/AIDS***

The success of initiatives to prevent reoffending is dependent on implementing effective and proven correctional interventions. By definition, an effective rehabilitation program has been systematically and independently shown to reduce reoffending. This is the single most important measure of effectiveness of correctional interventions. Since correctional interventions are ordered by the courts as part of the sentencing process, reoffending should therefore be the most important measure of the effectiveness of fair sentencing practices.

Correctional interventions must directly address the factors in the life of an individual that relate to offending. The Risk/Needs/Responsivity assessment protocol in use in our correctional institutions is meant to identify those factors and help design the risk management (supervision) and risk reduction (rehabilitation) interventions.

OFFENDER RE-ENTRY MANAGEMENT

Our provincial prisons generally fail to break the cycle of crime and reoffending. More effective programs are needed. BC Corrections has a limited integrated offender management (IOM) program, the success of which has not been fully evaluated. The principles that have inspired the program reflect best practices. However, there is still a concern that the majority of offenders serving short sentences do not get much help dealing with their issues and preparing for their return to the community. Efforts to motivate these offenders to desist from crime and help them connect with services in the community and prepare themselves for post-release are limited.[90]

The evidence shows that factors such as attitude, self-control, mental and physical health, drug and alcohol abuse, employment and housing can have a huge impact on the likelihood of reoffending. For example, being employed or having stable accommodation can significantly reduce the risk of reoffending and increase the likelihood of successful social reintegration. More effective and accessible vocational training and trade certification programs should be developed.

90 A similar situation is addressed in a 2010 report of a U.K Report by the Comptroller and Auditor General on "Managing Offenders on Short Sentences", National Audit Office, London, March 10, 2010. The report offers some valuable suggestions.

Building a system that can reduce the level of recidivism is a major undertaking. It requires long-term changes to the way the criminal justice system and other stakeholders operate in order to ensure that they all make the maximum possible impact on recidivism. To do so they must jointly focus on that shared objective, work together, focus on the right people and issues, use proven methods of intervention, and be accountable for delivering measurable outcomes.

We must urgently identify programs and strategies that will help prisoners successfully reintegrate with their communities and desist from crime. A successful crime reduction strategy must address factors contributing to the large number of crimes committed by individuals who have served one or several terms of incarceration and failed, upon their release, to integrate the community as law-abiding citizens.[91] Some effective programs and strategies already exist for offenders serving long-term sentences in federal institutions; they are based in part on sound programs, a conditional release system and effective supervision after release. Similarly robust programs still need to be implemented in British Columbia for offenders serving short sentences.

Crime reduction includes effective measures to prevent recidivism and to stop the cycle of failed adaptation by repeat offenders. Offenders released from custody face a variety of challenges that may hinder their ability to become law-abiding citizens. The period of transition from custody to community can be particularly difficult for offenders. In the absence of material and psychological support and access to treatment, lodging and employment, few offenders can break the cycle of prison, release and reoffending.

Positive reintegration outcomes can be produced when factors predisposing an individual to criminal behaviour are addressed in a holistic fashion and when the physical and social needs of offenders are supported both within the prison and after the offenders' release. In recent years, more emphasis has been placed on designing comprehensive interventions, based on a continuity of care, to provide consistent assistance and supervision to offenders within and beyond prison. Managing the offenders' re-entry process can reduce crime. Developing programs to support their reintegration may offer a cost effective way of preventing crime.

BC Corrections implemented and evaluated a pilot IOM program dealing with a limited group of recidivist offenders serving a sentence of incarceration of a minimum length (90 and 120 days) and period of community supervision of at least six months. The IOM project provided an environment where BC Corrections custody and community staff worked collaboratively with the offender to develop a comprehensive and integrated case plan addressing the offender's criminogenic factors and needs while in custody. An internal program review showed that it produced a significant reduction in the rate of recidivism of participants as compared to that of a control group.[92] This has led to suggestions that the program should be turned into a comprehensive approach to manage the re-entry of all offenders.

91 Griffiths, C. T., Dandurand, Y. and D. Murdoch (2007). *The Social Reintegration of Offenders and Crime Prevention*. Ottawa: National Crime Prevention Centre, Public Safety Canada. See also: Myers, D.L., & Olson, J. (2013). "Offender Re-entry and Reintegration: Policy and research", *Criminal Justice Policy Review*, 24 (1): 3-8.

92 BC Corrections, Performance, Research and Evaluation Unit, "Integrated Offender Management (IOM) – The Case for Working Together", *Revealing Research & Evaluation*, Issue #5, December 2011.

There is likely a need to reconsider current programs offered by BC Corrections to ensure that they focus on re-entry planning and preparation and re-entry management. For a long time, the non-governmental sector played a very important role in facilitating the successful reintegration of offenders. The fact that financial support for and collaboration with this sector is now often minimal is possibly responsible in part for the high rate of failed re-entry and re-offending.

In 2011, BC Corrections embarked on the province-wide implementation of the Strategic Training Initiative in Community Supervision (STICS) and training is rolling out across the province over three years. Probation officers are being trained to apply evidence-based principles of offender rehabilitation in all aspects of client supervision. To some extent, these new skills should help probation officers deliver more effective re-entry management and social reintegration interventions as part of an amplified IOM approach.

EFFECTIVE SOCIAL REINTEGRATION PROGRAMS

The social and economic costs of the offenders' failed reintegration should be a serious concern for British Columbians as taxpayers. When an ex-prisoner does not successfully reintegrate there are direct and indirect costs to the community.[93] The Province can ill afford not to invest in social reintegration programs for offenders. Such programs form an essential part of a comprehensive crime reduction strategy and can be delivered at a fraction of the cost of detention and deliver cost-effective results. Investments in prisons, without a complementary investment in rehabilitation and reintegration programs, do not produce a significant reduction in crime. They may in fact compound the problem.

Social integration programs refer to various forms of interventions targeting individuals to reduce the likelihood that they will reoffend.

Social integration interventions are therefore attempts by various components of the justice system, in partnership with social agencies, NGOs, educational institutions, communities and the offenders' family, to support the successful social integration of individuals at risk of offending or reoffending. They are very often supported by effective supervision of the offender in the community and cognitive training and other interventions to support the offender's desistance from crime.

In general, there are two main categories of social reintegration programs: (a) programs and interventions offered in the institutional setting itself, in advance of the offenders' release, to help them resolve issues, address risk factors associated with their criminal behaviour and acquire the necessary skills to lead law-abiding and self-supporting lives, as well as to prepare them for their release and re-entry into society; and, (b) community-based programs, sometimes part of a conditional release scheme, to facilitate the social reintegration of offenders after their release from custody. In that second category, programs typically rest on some form of community supervision as well as various forms of support and assistance to offenders and sometimes also to their family.

93 M. Borzycki and T. Makkai (2007), *Prisoner Reintegration Post-release*. Canberra, Australian Institute of Criminology, p. 25.

A period of incarceration, with offenders under strict control, can be used to stabilize and rehabilitate them, but those gains are often short-lived without reintegration programs.[94]

Reintegration programs must address risk factors associated with recidivism, the needs of offenders and the challenges they encounter upon their release from prison. Interventions must vary according to the risk factors and the type of social integration challenge they are designed to address. Programs can focus on particular challenges confronting offenders, such as drug use, drug dependence or unemployment. Specific programs are required in order to deal with specific categories of offender, such as repeat offenders, drug-dependent offenders, young offenders, mentally ill offenders or dangerous sexual offenders.

To successfully reintegrate into the community offenders need help in finding and retaining employment. The Panel heard with interest of a Correctional Service Canada program which provides offenders with a third party trade certification that is valuable to employers, gives offenders an opportunity to compete with other applicants, and builds their confidence to apply for employment.[95] Certification is one of the most valuable tools that can help an offender get a job. It is an independent assessment showing that the candidate has the skills necessary. Some certification is accessible after a short training program. In other instances, the training leads to red seal certificates that are recognized across Canada. The certification does not identify the individuals as having a criminal record.

It is important for the offenders to know that the qualifications they are getting from the training are at par with what they would gain from a program taken in the community. This levels the playing field and builds confidence for the offender. Certification helps to turn the focus away from an unstable work history and put focus on the current certified skills. In many instances, training is offered on the basis of funding programs that are already available. Similar programs could be developed by BC Corrections to facilitate the social reintegration of offenders serving a term of probation.

Given the Province's expected great need for trained workers for its rapid economic development and the anticipated shortage of trained workers, the strategy should be treated as a priority.

Various interventions can be designed to prepare offenders for their return to the community. Such interventions tend to be more effective when delivered in partnership with community-based agencies so as to ensure some continuity of intervention after the offenders' release. The weeks immediately preceding and following the release of an offender from custody are particularly important. What happens during those few weeks often determines whether the offender's reintegration will be successful or not.

During the consultations, the Panel was frequently reminded of the crucial importance of "supportive housing" and the importance of shelters, transition houses and other programs to support the reintegration of offenders and limit the impact of their incarceration on their family.

94 United Nations Office on Drugs and Crime (2012). *Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders*. New York: United Nations

95 Holeczek, A. (2014). *Employment and Vocational Training Proposal*. Presentation to the Blue Ribbon Panel on Crime Reduction, May 29, 2014.

A report by the Elizabeth Fry Society of Greater Vancouver emphasizes the need for safe shelters for women and their children and viable transition houses for women. It outlines the particular gaps in services in rural and remote communities and the specific needs of Aboriginal women. It also emphasizes the need to recognize women's shelters as part of a continuum of care and healing, not only a continuum of housing.[96] In this and other areas it is important to design gender-responsive programs and services, including gender-responsive addiction counselling and treatment. Social reintegration support for women is offered by the Elizabeth Fry Society and a few other NGOs, whether the offender is on probation or not, but these essential services are not publicly funded.

It was suggested that making better and more efficient use of "third party administration" for social assistance would likely provide gateway access to other supports and services. Some key agencies working with offenders should be enabled to refer offenders through expedited pathways to health, addictions treatment and the BC Housing Registry. This would greatly facilitate the establishment of the continuum of care which, as part of an IOM approach, is clearly necessary.

CONDITIONAL RELEASE PROGRAMS

Early conditional, supervised release of offenders is a very effective tool in supporting their successful reintegration. However, this particular tool is not used very effectively in our province. In fact, the use of parole has declined significantly over the last few decades and has reached an all-time low, particularly for provincially sentenced offenders.[97]

According to the *Corrections and Conditional Release Act*[98] the Parole Board is not required to review applications for day parole from offenders serving a sentence of less than six months. The majority of offenders in provincial institutions are therefore not eligible for day parole due to short sentences. To address the issue of provincial offenders not qualifying for parole, it is sometimes proposed that a mandatory period of community supervision should follow all short sentences of incarceration so that offenders might benefit from the same gradual and structured return to the community.

96 Bayes, S and A. Brewin (2012). *Bridging the Divide: Building Safe Shelters for Women and Families in BC*. Vancouver: Elizabeth Fry Society of Greater Vancouver

97 Dauvergne, M. (2012). "Adult Correctional Statistics in Canada, 2010/2011", *Juristat*. Ottawa: Statistics Canada, CCJS.

98 *Corrections and Conditional Release Act,* s.115 (2).

Appendix G

Improved Police Capacity to Reduce Crime

Crime reduction is not the sole responsibility of the police. The police are only one of many contributors to crime reduction, but it is important to reaffirm that crime reduction is a major and central priority for the police and one of the main yardsticks by which to measure their performance. There are many ways to conceive of the role of the police and to measure their performance. However, it is important to optimize the role of the police in reducing crime and ensure that they have the means and resources to do so effectively.

To do their part in reducing crime, police must be strategic, preventive and proactive instead of reactive. That transformation from a reactive to preventive approach must be reflected, not only in public speeches, but also in policies, priority setting, management, allocation and deployment of resources, and in recruitment, training, deployment, promotion and rewards structures and practices.

> *"A renewed commitment by the government and the police to implementing the core principles of evidence-based crime reduction will assure that British Columbia continues to enjoy substantial reductions in crime."*
>
> **DR. IRWIN COHEN**
> ***RCMP Research Chair in Crime Reduction,***
> ***School of Criminology and Criminal Justice***
> ***University of the Fraser Valley***

All of this is consistent with British Columbia's Policing and Community Safety Plan, which articulates a vision in which policing is accountable, performance-based and evidence-led and works in an integrated manner with justice, social sector and community partners.[99] The plan acknowledges that police services must be performance-based and that the outcomes of effective policing must be measurable. Crime reduction is one of these outcomes.

The Policing and Community Safety Plan calls for the implementation of Province-led crime prevention initiatives.[100] However, while there may be a need for some specific initiatives, the Panel is of the view that a lot more will be necessary in order to achieve significant crime reduction outcomes. It will not be sufficient to simply implement a few more police-based crime reduction initiatives.

99 Ministry of Justice of British Columbia (2013). *British Columbia Policing and Community Safety Plan*, Victoria, December 2013, p. 25.

100 *British Columbia Policing and Community Safety Plan*, p. 33.

Crime reduction, at the police level, often dictates proactive as opposed to reactive measures. A fundamental change in policing style, methods and approaches is often required. Aligning crime reduction and problem solving initiatives with real crime issues and the crime reduction priorities of the community requires the service of well-trained crime analysts and genuine consultations with the community. Technology now offers many new opportunities for crime reduction initiatives at the local level.[101] What is required is a proactive information-led, intelligence-led, performance-based approach, built on effective partnerships and focused on offenders and on public safety issues. In fact, some research has shown that police leadership focused on crime reduction as the primary goal stimulates innovation toward intelligence-led policing.[102]

An intelligence-led approach requires police organizations to collect, analyze, integrate, and disseminate vast amounts of structured and unstructured data to make the best strategic and tactical decisions and to implement effective crime reduction strategies. The police must invest in, develop and incorporate a number of different types of related analytics into everything they do. The police must continue to invest in developing a well-trained group of crime analysts. In that regard, research shows that leadership and effective use of technology are critical to initiating and sustaining such innovative practices.[103]

Among many innovations in policing, some police-based "focused deterrence" strategies (also referred to as "pulling-levers policing"[104]) applied to gang-involved offenders and repeat offending by substance-abusing probationers have produced some notable crime reduction outcomes.[105] Best practices in that area should be systematically identified and replicated.

> *"B.C. is a vast province with urban, coastal, rural and remote areas. There is a need for evidence based research to find effective and efficient ways to provide policing in such diverse communities."*
>
> **DR. PATRICIA BRANTINGHAM,**
> ***Director, ICURS Institute, SFU***

101 Byrne, J. and G. Marx (2011). "Technological Innovations in Crime Prevention and Policing. A review of the research on implementation and impact", *Cahiers Politiestudies*, no. 20: 17-40.

102 Darroch, S. and L. Mazerolle (2013). "Intelligence-led Policing: A comparative analysis of organizational factors influencing innovation uptake", *Police Quarterly*, 16 (1): 3-37.

103 Darroch, S. and L. Mazerolle (2013). See above note.

104 Kennedy, D. M. (2008). D*eterrence and Crime Prevention: Reconsidering the Prospect of Sanction*. London: Routledge. See also: Braga, A. A., and D. L. Weisburd (2012). *The effects of "Pulling Levers" Focused Deterrence Strategies on Crime*. Oslo, Norway: Campbell Collaboration.

105 Braga, A. A., Weisburd, D. L. (2012). "The Effects of Focused Deterrence Strategies on Crime: A Systematic Review and Meta-Analysis of the Empirical Evidence", *Journal of Research in Crime and Delinquency*, 49 (3): 323-358. See also: Squires, C. and D. Plecas (2014). "Death by a Thousand Cuts: The Abbotsford Police Department's multi-dimensional program for gang suppression", in den Heyer, G. and D. Das (Eds.), *Economic Development, Armed Violence and Public Safety: Their Effect on Police Reform*. Boca Raton, CRC Press.

A review of successful crime reduction initiatives at the police level shows that they tended to be those in which the police concentrated on identifying the most active criminals, the most problematic places, and the most significant crime problems in their jurisdiction. They made extensive use of crime data and analysts to understand and predict prolific offenders and crime hot spots. They then proactively used that information together with other stakeholders to prevent, deter and respond to various forms of crime. In many instances, this was assisted by the integration of sophisticated technology to better determine and predict criminal events, cycles, trends, locations and networks. The most successful crime reduction outcomes were obtained through problem-oriented policing and prolific offender management approaches.

The cultural and operational changes required in policing were recently described as follows, based on a review of police-based crime reduction initiatives in British Columbia:

"In effect, the shift required police to move away from being a reactive force to a proactive agency, it required a move away from a focus on crimes to a focus on offenders, it required a move away from a belief that one can arrest one's way out of crime trends to focusing on rooting out the primary causes of crime in a community, it required a move towards partnering meaningfully with other stakeholders, it required no longer relying on traditional approaches of crime control, but relying on evidence-based practices and it required moving away from using statistics on police activities as a measure of success to being more accountable for achieving defined outcomes. The result was that, while some RCMP detachments and municipal police departments embraced some of these principles, there were very few police agencies that accepted, implemented and integrated all of them."[106]

A similar review of policing strategies for reducing crime in the United States identified the following as most effective: strong partnerships with other criminal justice system agencies, local government, business stakeholders and neighbourhood groups; analytic capacity to provide crime pattern information to officers and managers and to build accountability for crime prevention and crime control; and decentralized policing services to focus on specific neighbourhoods and districts.[107]

106 Cohen, I.M., Plecas, D., McCormick, A. V. and A. Peters (2014). *Eliminating Crime: Seven Essential Principles for Police-Based Crime Reduction.* Abbotsford: Centre for Public Safety and Criminal Justice Research, University of the Fraser Valley, p. 3.

107 Kroovand Hipple, N., McGarrell, E.F., Klofas, J.M., Corsaro, N.A., and H. Perez (2008). *Identifying Effective Policing Strategies for Reducing Crime.* Indianapolis, In: Sagamore Institute.

Appendix H

Crime Reduction

BROAD PREVENTION MEASURES

There are many proven strategies to target the social and economic factors that increase the risk of crime and victimization. Approaches vary in terms of their intervention focus, the types of activities undertaken, the agencies and people involved and their demonstrable results.[108]

Along with other provinces and territories, British Columbia has benefited from a strong partnership with Public Safety Canada's National Crime Prevention Centre (NCPC). Since its inception in 1998, the centre has supported dozens of provincial, regional and local crime prevention projects and activities in British Columbia. Communities in British Columbia have both contributed to and benefited from the tools and resources developed through the NCPC. The Ministry of Justice Community Safety and Crime Prevention Branch has worked closely with the NCPC to identify priority issues and areas of focus.

Although national and provincial policies do have an impact on the prevailing social and economic situation of most communities, it is generally acknowledged that the most effective social prevention measures are generally community-based, taken at the local government level, building social cohesion, promoting community development, and addressing local circumstances and factors associated with crime. It is important to ensure that crime prevention is integrated across sectors and agencies and that approaches are evidence-led, focus on priority issues and have measurable results.

During the consultations held in preparing the BC Policing and Community Safety Plan, participants expressed a need for increased leadership, direction and consistency in crime prevention programming from one community to the next. They also identified a lack of metrics and measures for assessing the effectiveness of crime prevention approaches. Participants expressed the importance of identifying and communicating what works as well as a need to balance provincial leadership with the flexibility to meet local needs.[109]

108 For example, see: World Health Organization (2010). *Violence Prevention: The evidence*. Geneva: World Health Organization.

109 *British Columbia Policing and Community Safety Plan*, 2013, p. 33.

REDUCING OPPORTUNITIES FOR CRIMINAL BEHAVIOUR

Situational crime prevention is based on the notion that certain types of crime are largely opportunistic and can be prevented by modifying and planning contextual factors in a way that limits the opportunities for offenders to commit certain types of crime.

There is a growing body of research and evidence about the effectiveness and limitations of this approach.[110] Situational prevention activities may include improved security, more intensive surveillance and the deployment of surveillance technology, reducing the reward for committing certain types of crime (taking the benefit out of these crimes), and better planning of spaces and movement of people to remove opportunities for crime. Much more could easily be done in the province to disseminate information on best practices to all concerned and to facilitate the systematic application of these methods where warranted.[111]

The secret to the success of this approach usually lies in a systematic analysis of current and emerging crime problems and, after consultation with stakeholders, the application in selected spaces of proven measures to reduce criminal opportunities. The private security sector, well developed in this province, can and does play an important role in the deployment of these measures.

Some broader planning initiatives, including "crime prevention through environmental design" (CPTED) and urban renewal projects, can also have a significant impact on certain types of crime. The B.C. Association of Police Chiefs, for instance, is strongly suggesting that a civil process be implemented for ensuring that problem premises, which create a focal point for criminal activity and a safety risk, are dealt with.[112]

A comprehensive crime reduction strategy should identify where and how situational crime prevention measures can be most successfully applied by communities, promote evidence-led programming in that particular area, and provide ways to identify and disseminate information about best and promising situational crime prevention practices. Some communities will need technical support to apply situational crime reduction measures and to integrate crime prevention in local planning. This is an area where there can be many opportunities for initiatives based on public-private partnerships. There is in fact a considerable amount of expertise already available on this subject in British Columbia.

110 For example: Marzbali, M.H., Abdullah, A. and N. A. Razak (2011). "A Review of the Effectiveness of Crime Prevention by Design Approaches Toward Sustainable Development", *Journal of Sustainable Development,* 4 (1): 160-172. Also: Armitage, R. and L. Monchuk (2011). "Sustaining the Crime Reduction Impact of Designing Out Crime: Re-evaluating the Secured by Design scheme 10 years on", *Security Journal*, 24 (4), 320-343.

111 See for example: P.J. Brantingham and P.L. Brantingham, (2012) "Situating Situational Crime Prevention: Anchoring a Politically Palatable Crime Reduction Strategy. " In Nick Tilley and Graham Farrell (Eds), *The Reasoning Criminologist: Essays in Honour of Ronald V. Clarke.* New York and London: Routledge, pp. 240-251. Also: P. L. Brantingham, P. J. Brantingham, and W. Taylor, (2005) "Situational Crime Prevention as a Key Component in Embedded Crime Prevention", *Canadian Journal of Criminology and Criminal Justice*, 47: 271-292

112 A reference is made here to the *Community Safety Act* which is not yet in force.

The overall reduction in official crime rates observed in our province over the past decade was the result of a reduction in reported property crime incidents. Many other types of crime have not necessarily been reduced similarly. Violent crime, in particular domestic and sexual violence, violence against children, organized crime and other serious crimes continue to be a great concern. Even when we focus on acquisitive crime, it is quite clear that all forms of property crime were not equally reduced. For instance, there is evidence of a rapid growth in identity theft, financial and economic crime, including computer assisted crime, although these types of crime often go unreported and do not figure in official crime statistics.[113] A recent report on cybercrime noted that one possible reason for this increase is the ease with which cybercrime tools are available and the fact that criminals, even those without deep technical expertise, can use these tools and access numerous services.[114]

The growing problem of internet-based crime urgently requires attention. Indeed, this issue goes to the core of understanding what is transpiring with crime trends. Solid answers about the "property crime drop" are still elusive, but there is no doubt that a significant amount of property crime has migrated from the streets to the virtual space. In particular, the significant rise in identity theft and internet-based crime as it relates to thefts and frauds against banking and other financial institutions and their customers is a major source of concern. This is a multi-faceted often transnational crime problem which presents some very real challenges for law enforcement.

The Panel heard compelling evidence from the Canadian Bankers Association about the extent and the gravity of this problem. Credit card fraud losses alone in Canada are estimated to be a minimum of $500 million per year with less than one per cent of cases reported to police. This figure does not include many other types of frauds against the banks. The Canadian Anti-Fraud Centre estimated losses to be between $10 billion and $20 billion per year in Canada, based on 2010 data.[115] The Panel heard from several prolific offenders who referred to the ease with which they could commit these crimes, without much fear of being arrested. Because financial institutions very quickly reimburse customers for these types of losses, the crimes are rarely reported to police and the latter are not inclined, as a result, to treat them as a priority.

113 According to the 2013 Norton Cybercrime Report at least half of "online adults" were victim of cybercrime in the previous year. The Norton Cybercrime Report is an annual report commissioned by Norton by Symantec aimed at understanding how cybercrime affects consumers and how the adoption and evolution of new technologies impacts consumers' security. The research was conducted by Edelman Berland, an international research agency. Findings are based on self-reported experiences of over 13,000 adults across 24 countries, including Canada. The report, extrapolating from the survey data, estimated that nearly 380 million people in 24 countries had been victim of one form of cybercrime or another over the previous 12 months.

114 Samari, R. (2014). *Cybercrime Exposed – Cybercrime-as-a-Service*, Santa Clara (CA): McAfee.

115 *https://www.antifraudcentre-centreantifraude.ca/english/newsroom-25-11-2010.html*

EARLY OR TIMELY INTERVENTIONS FOR INDIVIDUALS AT RISK

The Justice and Public Safety Council's *Strategic Plan for the Justice and Public Sector 2014-2017* includes a crime prevention goal stated as follows: "We offer early, appropriate and effective interventions to reduce antisocial behaviour, assisting people in rebuilding healthy, productive lives."[116]

The government has established an Inter-ministry Committee on Crime Prevention to develop a provincial crime prevention strategy to address underlying cyclical, cultural, and generational factors that lead to crime. The plan is meant to balance provincial leadership with local coordination to ensure communities have the flexibility to tailor approaches to their own unique needs.[117]

EARLY INTERVENTION AND DEVELOPMENTAL CRIME PREVENTION

There are many local programs in the province focusing on developmental crime prevention strategies. Intervening early and at significant points in the life of a child or young person at risk of developing behavioural issues can help prevent future offending. These interventions are usually designed to enhance protective factors and address risk factors that may affect a young person's likelihood of engaging in criminal activities.

There are many examples of programs which deserve further consideration, including the Youth Inclusion Program (Kamloops), the Community Prevention Education Continuum (CPEC), the Kids-4-Kids program (Vancouver Island) and D.A.R.E. The Panel has also received a submission from the Big Brothers and Big Sisters of the Fraser Valley emphasizing the role of mentoring as a form of prevention, to help steer children away from behaviours and situations that negatively affect their academic, social and economic well-being. Mentoring is a commonly used intervention to prevent, divert and remediate youth engaged in, or thought to be at risk for, delinquent or anti-social behaviour. Mentoring for high-risk youth can lessen the risk of involvement in delinquent behaviour. It is an approach that deserves further attention and research.[118]

British Columbia has invested over the years in Fetal Alcohol Spectrum Disorder (FASD) prevention, support and intervention. FASD has been identified as a major public health concern in both Canada and the United States. It is the most common form of preventable brain damage to infants in the Western world. The damage is irreversible and results in life-long challenges in learning, behaviour, employment and socialization.

116 See: British Columbia Justice and Public Safety Council, *Strategic Plan for the Justice and Public Safety Sector – April 2014 – March 2017*, Victoria. See also: *British Columbia Policing and Community Safety Plan*, p. 33.

117 British Columbia, Ministry of Justice (2013). *White Paper on Justice Reform, Part two: A Timely, Balanced Justice System*, Victoria, February 2013, p. 17.

118 For a review of the effect of mentoring programs, see: Tolan P., Henry D., Schoeny M., Bass A., Lovegrove, P., and E. Nichols (2013). *Mentoring Interventions to Affect Juvenile Delinquency and Associated Problems: A Systematic Review*, Campbell Systematic Reviews 2013:10.

Adversity experienced by children and youth may affect their development and place them at risk for a range of maladaptive outcomes, including antisocial and delinquent behaviour. A child's early formative years will affect his/her future development and early interventions are therefore recommended. A lot is already known about the risk factors to be addressed as part of evidence-based programs.[119] This needs to be translated into effective and sustainable programs across the province.

> *"Research has consistently indicated that the likelihood of children and adolescents becoming serious and violent young offenders can be reduced by early and comprehensive programs directed at the distinctive profile of risk and protective factors for the separate pathways. Also, these programs, when funded and implemented appropriately, are highly cost-effective."*
>
> **DR. RAYMOND CORRADO, PROFESSOR**
> ***– School of Criminology, Simon Fraser University***

In its profile of B.C. youth in custody, the McCreary Centre Society found that 70 per cent had at least one family member who was criminally involved and, for 29 per cent, this was a parent. The study revealed that the majority of youth in custody in 2012 (65 per cent) had lived in a foster home or group home, or had been placed on a youth agreement at some point in their lives. Thirty-two per cent of youth entering a custody centre were living in government care at that time.[120]

The 2009 joint special report of the Representative for Children and Youth and the Provincial Health Officer revealed that children in care had a much higher rate of involvement in the criminal justice system than other children (35.5 per cent as compared to 4.4 per cent) and that nearly three quarters of the youth in care involved in the youth justice system suffered from a serious mental illness or intensive behavioural problems.[121] No matter how one looks at these statistics, they do not say much about the effectiveness of the interventions and assistance currently offered to this at-risk group.

119 See for example: Day, D. M. and S. G. Wanklyn (2012). *Identification and Operationalization of the Major Risk Factors for Antisocial and Delinquent Behaviour among Children and Youth*. Ottawa: Public Safety Canada, National Crime Prevention Centre.

120 McCreary Centre Society (2013). *Time Out III – A Profile of BC Youth in Custody*, Vancouver, updated February 2014.

121 Representative for Children and Youth, Provincial Health Officer. Joint special report. *Kids, Crime and Care: health and well-being of children in care: youth justice experiences and outcomes*. Victoria, BC: Representative for Children and Youth and the Provincial Health Officer; 2009.

A recent study in this province also indicated that children of parents in conflict with the law or children of incarcerated parents are specifically at risk both in terms of their own healthy development and the likelihood that they may engage in criminal behaviour.[122] Programs that specifically address the needs of these children are virtually nonexistent in British Columbia.

It is necessary to offer effective interventions and programs to provide support for vulnerable populations, including Aboriginal children and youth in government care and children whose parents are involved in the criminal justice system. When, according to normal assessment practices, a child is not directly at risk of neglect or maltreatment, the official child protection response (MCFD) is usually not to intervene. However, many children who are not at risk of abuse or neglect belong to fragile families and face issues that will not only affect their development but also put them at risk of becoming embroiled in crime, addiction or other forms of problem behaviour. The Panel heard that support programs targeting these families are poorly funded and typically insufficient.

The National Crime Prevention Centre estimated the enormous social and economic costs of failing to intervene in a timely manner in the lives of young people at risk. The savings produced by early crime prevention programs include not only reductions in the costs of future crimes, but also reductions in the costs of welfare assistance, legal aid, special education and addiction treatment services.

These findings are supported by a range of studies. For example, Cohen[123] estimated (in 1997 US dollars) that the typical career offender who starts off as a juvenile, accrues approximately $1.5 to $1.8 million in costs, with about $1.4 million of that associated with future adult criminality. Of the total lifetime costs to society, it was estimated that "25% are tangible victim costs, 50% lost quality of life, 20% criminal justice costs, and 5% offender productivity costs." Cohen also attempted to estimate lifetime costs associated with heavy drug users. He reported that the "total lifetime cost of drug-related crime and homicides for the average heavy drug user is estimated to range from $283,000 to $781,000."

Other research, such as Delisi and Gatling's[124] study of 500 habitual offenders, shows values of similar magnitudes. A key point that Delisi and Gatling note, however, is that the cost borne by victims is too often overlooked. As they conclude from their research, "the victimization wrought by the worst offenders carries a hefty price tag averaging $1.14 million".

Here again there is a considerable amount of expertise available in British Columbia in designing, managing and evaluating such prevention programs. There is also a considerable amount of reliable knowledge on how to plan and ensure the success of such programs. They need to be readily accessible in all communities and implemented in a manner that avoids stigmatizing young people at risk or their family.

122 McCormick, A., Millar, H., and G. Paddock (2014). *In the Best Interests of the Child: Strategies for Recognizing and Supporting Canada's At-Risk Population of Children with Incarcerated Parents*. Centre for Safe Schools and Communities. University of the Fraser Valley

123 Cohen, M. (1998). "The Monetary Value of Saving a High Risk Youth", *Journal of Quantitative Criminology*, 14: 5–33.

124 Delisi, M. and J. Gatling (2003) "Who Pays for a Life of Crime? An empirical assessment of the assorted victimization costs posed by career criminals." *Criminal Justice Studies: A Critical Journal of Crime, Law and Society*, 16: 283-93.

Most of these programs would normally be implemented outside the criminal justice system, usually without the participation of local law enforcement. Responsibility tends to rest with the education, child welfare and health sectors. The evaluation of many of these programs, in Canada and elsewhere, shows that they improve the life-course development of children at risk and reduce the risk of offending.

Well-planned early interventions and supports have many advantages. For individuals and families, these advantages include reduced duplication of services, fewer people to meet, earlier identification of problems, more direct access to services, more timely response by agencies and improved quality of services. For departments and agencies, the benefits include access to a broader source of knowledge to draw from, enhanced clarity of respective roles and functions, more efficient and effective use of scarce resources, and increased capacity to work effectively with each other. In some cases, integration of services may also produce some reduction in workloads and operational costs (e.g., fewer calls for police services).

In Prince Albert, Saskatchewan, a model was developed to facilitate interagency information exchange and collaboration in situations which, left to themselves, would likely lead to criminal offending and victimization. The PA Hub model is a partnership approach that draws on the combined expertise of community agencies to address complex social and human situations before they become policing problems. Specifically, the Hub's focus is on timely identification of individuals and families at risk, early recognition of the worsening of situations and the initiation of prompt action by the responsible department or agency to manage and mitigate the risk. Members of the Panel attended a Hub meeting and were able to observe first-hand how the interventions are planned and executed.

Drawing lessons from the multiagency model taking shape in Scotland, the Hub itself is a twice-weekly, 90-minute review of specific cases among front-line professionals representing 20 departments and agencies, including Addiction Services, Adult and Youth Probation, Bylaw Services, Child Protection, Corrections, Housing, Mental Health, Public Health, PA Grand Council, Police Services and Social Services. Since 2011, when the PA Hub was established, most situations for discussion have been brought forward by Social Services, police and schools. The Hub model connects individuals and families at risk to the services that can offer help as quickly as possible, when they need it the most.

It is not a policing model. It is a community safety model in which police have an essential role to play, alongside others, and from which police have much to gain. It is designed to address social issues and improve outcomes, including general public safety and community wellness. Most importantly, the Hub model draws on the resources and insights of multiple agencies, allows for the sharing of relevant information, is "risk-based" rather than "incident driven", proactive and preventative, and its outcomes can be continually measured and assessed. The goal is to stop crime before it happens and keep individuals out of the criminal justice system.

There are indications that the Hub model is improving general public safety and community wellness in Prince Albert. It is being emulated in several Saskatchewan communities and versions of the model are being considered or introduced in other jurisdictions. A formal evaluation of the Hub initiative in Prince Albert is currently underway.

The Panel's consultations have certainly confirmed the real interest amongst stakeholders and in most communities in seeing the government demonstrate strong leadership through the development and implementation of effective developmental prevention strategies.

TIMELY INTERVENTIONS FOR VULNERABLE AND AT-RISK INDIVIDUALS

The importance of developmental crime prevention programs and early interventions focusing on at-risk children and youth is now well accepted. However, an obsessive focus on early interventions can prevent communities from understanding the need for timely interventions to help people who become vulnerable or at-risk at some later point in their lives.

It is also important to recognize the importance of offering services, support and assistance to people who find themselves at critical junctures in their life or in very vulnerable situations, and not just early in life. People who lose their job or their home, homeless people, people who are victimized or have experienced a traumatic incident, people who suffer from mental illness, people with addiction issues and undocumented migrants can all find themselves in a situation that puts them at risk of committing crime. They should of course be helped, whether they are at risk of becoming criminals or not.

There is really no point in waiting until people have committed a crime or have been caught in the criminal justice and correctional system for years before providing them with assistance, support or treatment. For example, there can be substantial cost savings in offering people with addiction issues ready access to treatment before they begin to commit a large number of property crimes to support their addiction or turn violent.

In its submission to the Panel, the BC Centre for Excellence in HIV/AIDS insisted that early intervention in substance use disorder can dramatically reduce future health care costs (e.g., costly hospitalizations) and costly social harms (e.g. drug crime). Therefore, Dr. Julio Montaner argued, there is an urgent need to expand investments in early intervention for substance use disorders on a province-wide level. The lack of accessible care for patients with substance use disorders and the inability to intervene early when patients present to physicians or emergency departments create missed opportunities to prevent costly infections and mental health sequels of untreated substance use disorder.[125]

In 2010, the government adopted a 10-year plan to address mental health and substance use in British Columbia: "Healthy Minds, Healthy People".[126] The plan acknowledges that "(…) people with severe mental disorder and substance use disorders must be actively supported in their own recovery process and supported to achieve their individual potential and independence."[127]

125 *Submission of the BC Centre for Excellence in HIV/AIDS to the Blue Ribbon Panel on Crime Reduction*, prepared by J. Montaner, with input from I. Day, E. Wood, B. Nosyk, S. Goldenberg, K. Shannon, M-J. Milloy, and T. Kerr, April 30, 2014.

126 There are also annual reports (in 2011 and 2012) monitoring progress in implementing the plan.

127 British Columbia, Ministry of Health, *Healthy Minds, Healthy People*, p. 31.

The following priorities for action were identified with respect to people with severe and complex mental disorder and/or substance dependence: enhancing evidence-based community interventions across the lifespan; enhancing housing supports; strengthening community-residential treatment options; ensuring appropriate access to hospital and socialized bed-based treatment; and developing improved coordinated responses for people with complex challenges.

At present, there is no province-wide strategy to support crime prevention programs targeting various groups of individuals at risk or to relate these programs to specific crime reduction goals. Funding for these programs tends to be short-term and limited.

Appendix I

Funding: Reconsidering Our Investments

THE COST OF INACTION

The most recent study on the cost of crime in Canada dates back to 2008. It estimated that the total (tangible) social and economic costs of Criminal Code offences in this country were approximately $31.4 billion.[128]

Estimates of the social and economic costs of crime can increase the awareness of both policy-makers and the public of the full impact of crime on society and the potential gains that could result from reductions in crime. Such estimates can play an important role in ensuring that crime reduction initiatives achieve the greatest impact on crime for the money spent.

In the UK, an attempt was made over the last decade or so to measure the social and economic costs of crime as a performance measure for the criminal justice system and to provide information for crime reduction programs. We currently do not have the equivalent capacity in British Columbia to engage in such cost-benefit analysis. However, at a time when resources for new programs and initiatives are limited, it becomes important to develop that capacity to base programing decisions on credible measures of their costs and their impact. At present, local partnerships, local government officials and stakeholders are not equipped to carry out cost-benefit analyses that are comprehensive and consistent.

What the Panel tried to consider most specifically is the cost of reoffending by individuals who have already been convicted and processed through the criminal justice system. Some of the costs are not quantifiable. They can nevertheless be devastating and long-term. There is the impact on communities and on victims, many of whom will be repeat victims, and on their families, as well as the impact on the offenders themselves and their families. The financial cost of re-offending can be staggering.

Justice system and law enforcement costs in B.C., mirroring national trends, continue to increase and impact provincial and municipal budgets.[129] While there is some debate as to whether all crime is decreasing and at what rate, the available data suggest that there has been an overall decrease in rates of aggregate crime over the past decade, both nationally and in British Columbia.

128 Costs of Crime in Canada, 2008: *http://www.justice.gc.ca/eng/rp-pr/csj-sjc/crime/rr10_5/rr10_5.pdf*

129 See: British Columbia Justice and Public Safety Council, *Strategic Plan for the Justice and Public Safety Sector: April 2014 – March 2017*, Victoria, p. 30.

There is no debate, however, that the cost of responding to crime has increased.[130] Furthermore, the quality of life component is typically not considered in direct cost studies but is a significant element. Not only is the quality of life of the victim affected, society as a whole suffers. High crime areas generate lower property values, displace business activity, cause residents to invest inordinately in security and reduce the value of public places such as parks and recreation areas.

RECONSIDERING OUR INVESTMENTS

The Panel believes that British Columbians can get better results for their investments. The Community Safety and Crime Prevention Branch of the Ministry of Justice has funded hundreds of crime prevention initiatives in the last decade across the province, typically via time-limited or one-time funding. The projects have varied considerably in scope and objectives, and usually sought to address crime prevention issues at a community level.

The Panel did not review these projects in detail. However, it heard concerns that the funded projects and activities have had mixed results. The funded programs were developed from a grassroots perspective, but did not always consider and integrate research and evidence on best practices.

The Civil Forfeiture program since its inception has returned approximately $15 million from forfeiture actions to crime prevention and victims' programs in British Columbia. Grant priorities and criteria are determined annually. Priority streams have included Gang Prevention, Sexual Exploitation of Youth, Community and Youth Crime Prevention, Violence Against Women, Domestic Violence Units and Restorative Justice.

During earlier consultations by the Ministry of Justice, stakeholders indicated that: "they have difficulties determining what works in crime prevention and how to measure success. Without measures in place it can be complicated to make important decisions on where best to make investments, what programs should be supported and which ones might not be having the kind of impacts expected. This was identified as increasingly important in light of ongoing economic challenges and the increasingly complex needs of communities."

The Justice and Public Safety Council's strategic plan refers to the need to ensure that the whole sector is sustainable and acknowledges that measures are necessary to ensure that "all significant public investments, in cash or in kind, need to be evaluated against expected outcomes identified in advance." It also adds that, "Savings or efficiencies created from reforms should be clearly identified through planning and measurement, and be reallocated where resources are most required."[131]

130 Story, R. and T.R. Yalkin (2013). *Expenditure Analysis of Criminal Justice in Canada*. Ottawa: Office of the Parliamentary Budget Officer.

131 Idem, p. 22.

Some jurisdictions are looking at different funding models for crime prevention and offender rehabilitation programs. In the United Kingdom, the government has been introducing an integrated offender management system based on a new funding approach,[132] which relies on private sector service providers who are only paid in full if they reduce reoffending. The new payment incentives for service providers are meant to encourage them to "focus relentlessly on reforming offenders." Through the savings that are expected, rehabilitation support will be extended to offenders serving short-term sentences who have in fact the highest reoffending rates, are the hardest to reach and are the most prolific offenders.

Legislation will guarantee that these offenders, approximately 50,000 of them, are not left to their own devices on release. The goal is to reform the delivery of offender services in the community to reduce reoffending while delivering improved value for money for taxpayers. Once the scheme is fully operational, all offenders released from custody will receive statutory supervision and rehabilitation on release. Needless to say, this approach is getting a lot of attention in various countries and generates a lot of discussion on how to define and measure "returns on social investments."[133]

Similarly, in the United States, the idea of "payment for success" approaches to government contracting or the idea that government could pay only for proven success is gaining some momentum, although the modalities of such an approach have yet to be fully articulated. During the Panel's consultations it was suggested that expanded crime prevention programs could thrive under such an approach. In particular the "social impact bond" (SIB) was brought to the Panel's attention as something that is being implemented and funded in the United States, at various levels, and should be considered in this province. It was suggested that the SIB approach could be used to finance the expansion of prevention-focused social services that are expected to save the government money in the future.[134]

The Panel believes that it is imperative to change the way in which resources are currently allocated to reduce crime, in particular the resources expended to deal with persistent offenders and offenders with a substance abuse disorder, to manage short incarceration sentences and to supervise offenders in the community.

132 U.K., Ministry of Justice, *Transforming Rehabilitation – A Strategy for Reform*, London, May 2013. See also: House of Commons Justice Committee (2014). *Crime Reduction Policies; A Co-ordinated Approach?* – Interim report on the Government's Transforming Rehabilitation Program, 22th Report of Session 2013-14, London, 22 January 2014.

133 For example, see: Jardine, C., and B. Whyte (2013). "Valuing Desistence? A social return on investment case study of a throughcare project for short-term prisoners", Social and Environmental Accountability Journal, 33 (1): 20-32.

134 See: Lower-Basch, E. (2014). *Social Impact Bonds: Overview and Considerations*. Washington (D.C.): CLASP. See also: Fox, C. and K. Albertson, K. (2011). "Payment by Results and Social Impact Bonds in the Criminal Justice Sector: New challenges for the concept of evidence-based policy?", *Criminology and Criminal Justice*, 11: 395-413.

The Panel noted the work done in several American jurisdictions to support the "reinvestment process." The Justice Policy Centre at the Urban Institute in Washington D.C. has developed a "justice reinvestment toolkit" for local leaders based on an iterative process in which jurisdictions align the use of scarce criminal justice resources with public safety priorities.[135]

In considering ways to invest available resources in more effective crime reduction activities, existing criteria and mechanisms for investing some of the civil forfeiture funds currently available should be reviewed and aligned more tightly with the crime reduction priorities identified at both the provincial and the local levels.

There is a need for a mechanism to ensure that our crime reduction and prevention investments focus on priority issues, use proven strategies, reduce competition between organizations, foster coordination and clarify the roles of various agencies, including the police, in these crime prevention initiatives.

135 Ho, H., Neusteter, S. R., and N. G. La Vigne (2013). *Justice Reinvestment – A toolkit for local leaders*. Washington (D.C.): Urban Institute, Justice Policy Centre. See also: Council of State Governments Justice Centre (2013). *Lessons from the States – Reducing Recidivism and Curbing Corrections Costs through Justice Reinvestment.* New York: Council of State Governments Justice Center.

Appendix J

Promoting and Measuring Success

SUPPORT LOCAL PARTNERSHIPS TO REDUCE CRIME

Local crime reduction partnerships are needed in which every aspect of the justice system and all relevant human services agencies (governmental and non-governmental) contribute, in deliberate and cooperative ways, to the implementation of local crime reduction initiatives.

The Panel became very aware of the importance of supporting municipalities and municipal leaders in their efforts to reduce crime and set priorities for local crime prevention activities and programs. Provincial crime reduction initiatives should provide guidance but refrain from competing with local priorities. The province needs mechanisms to encourage municipalities to develop and implement crime reduction strategies and monitor their impact.

It is also important to address the lack of coordination at the local level and to provide a structure, as well as guidance and support, for the development of effective and sustainable local partnerships to reduce crime.

In doing so, all stakeholders need to reaffirm their commitment to an evidence-based crime reduction approach, supported by program evaluations and the dissemination of evaluation results.[136]

LOCAL PARTNERSHIPS

The Panel looked at several examples of local crime reduction initiatives. For example, in the City of Surrey, the Mayor's Task Force on Crime was created to analyze, develop and implement initiatives to deal with some of the contributing factors of homicides. The Task Force is identifying different strategies to prevent people from engaging in criminal lifestyles and to disrupt this activity in the community.

136 The Panel readily acknowledges that there are some challenges in evaluating crime reduction initiatives, but these could be systematically addressed. See for example: Morgan, A. and P. Homel (2013)."Evaluating crime prevention: Lessons from large-scale community crime prevention program", *Trends and Issues in Crime and Criminal Justice*, No. 458, Australian Institute of Criminology.

Recognizing that the vast majority of Surrey's 2013 homicides stemmed from high-risk lifestyles involving drugs and other criminal activity, the Mayor's Task Force has been focusing its efforts on targeting high-risk locations in the city. This "High Risk Location Initiative" (HRL) is a coordinated approach among the Surrey RCMP, City By-Laws, and Surrey Fire Services. The initiative targets locations that mirror those where some homicides have occurred in the past. It is generally these types of locations where those living high-risk lifestyles come together and create an increased risk to public safety and potentially violent crime. The Task Force has been active in disrupting criminal activity since December 1, 2013. In addition to enforcement, a shared data bank was developed with information on high-risk locations in order to improve information sharing and early identification of these locations.

Many communities have worked to improve their safety by identifying risk factors, situations and circumstances that negatively impact safety and taking action to address these factors and reduce crime. The most successful initiatives build on community strengths and resources, reflect local priorities, and are owned and led by the community. Notwithstanding this simple truth, the Panel also heard that local and provincial governments need to support these initiatives and provide sustained and coherent leadership. In particular, leadership is required to build consensus around priorities for action and community capacity to take effective concerted action.

The development of local coordination structures should be explored. For example, a collaboration model could be developed to support the establishment of an "Interagency Community Wellness and Safety Partnership" mechanism at the local level, or "Interagency Community Partnership" (ICP).[137] Innovative and collaborative community-driven arrangements, including those referred to earlier in Prince Albert or other hub-inspired approaches, should be considered seriously to further reduce crime and victimization, and enhance community wellness.

Community-based and non-profit organizations along with volunteers play essential roles in every British Columbia community. They are engaged in a range of social, economic and charitable activities that touch every aspect of life. They include many organizations that serve as intermediaries between government and people in the delivery of public services. The Panel, for example, met with the B.C. Crime Prevention Association, which remains eager to play an even more active role in supporting crime prevention initiatives throughout the province.

The role of these organizations would be enhanced under the new partnership arrangements. There should be regular and frequent meetings between ICPs and community organizations. The ICPs should not replace or reduce the role that community organizations play. The nature of the relationship will become clearer when the pilot projects are evaluated after two years. The ICPs and community organizations would be expected to work closely together to achieve shared crime reduction and public safety goals. This could be one of the distinctive features of the B.C. model of interagency and community partnerships.

137 Alternatively the term "Hub", as in the Abbotsford Hub, could be used. The term originated in Scotland and has some currency in Canada, notably in Saskatchewan.

SUPPORTING EVIDENCE-BASED PROGRAMS

Virtually all of the major initiatives on justice and police reform in recent years, whether from here in Canada or abroad, have recognized the need for evidence-based policy decisions. The government's White Paper on Justice Reforms stated: "A balanced justice system, where resources are applied proportionate to the risks presented, must be one in which reforms are measurable, sustainable, and grounded in rigorous analysis of system data. Reforms must be evidence-based."[138] This obviously applies also to programs and reforms aimed at reducing crime.

Although nearly every stakeholder group consulted by the Panel seemed to subscribe to the idea that our crime reduction programs and strategies must be based on strong empirical evidence, very little of the relevant "evidence" seems to reach local communities. The Province and, in particular the Ministry of Justice, still has a long way to go in building a capacity to support program evaluations, disseminate the results of these evaluations, articulate their implications for programming, and generally sustain a capacity for evidence-based decision making in the area of crime reduction.

The Crime Reduction Chairs established in British Columbia and the research centres they are attached to represent a significant provincial resource in that area with a particular focus on policing strategies. The concept of establishing Crime Reduction Chairs evolved from an international criminology conference in 2004, at which time it was evident from a variety of leading criminologists that work on criminological theory and research was being hampered by an inability to access highly relevant and recent policing data. It was felt, from a policing perspective, that much of the theory was being developed without a great deal of input from police and did not meet the immediate needs of providing guidance and tools to deal effectively with existing and evolving policing issues. There was an impression from both sides that there was a critical lack of understanding by the other as to what was important for research.

Over the next year, the concept was developed into a Memorandum of Understanding between the Province, Simon Fraser University, the University of the Fraser Valley and the Royal Canadian Mounted Police, signed in September 2005. The MOU was for a period of five years and was renewed for another five years in 2010. As intended, the MOU led to the development of a large number of mutually agreed research projects, which met the needs of both academia and policing.

It should be noted that the projects included studies on policing and mental health, the impact of growth and change in the province on need for police primary and secondary services, repeat victimization with emphasis of vulnerability and rural/ remote needs, and repeat offending. These and other projects point directly towards the need to better understand the evolving dynamics of local city context, the linkage between police services and other justice-system and social services and, with that, the complexity of policing in B.C.

138 Ministry of Justice of British Columbia (2013). *White Paper on Justice Reform, Part two: A Timely, Balanced Justice System*, Victoria, February 2013, p. 22.

In a largely unforeseen positive development, the arrangement also fostered a positive relationship between criminology students and police that led to job placements for students, many resulting in full time employment. In other words, collaborative research is not only addressing important public policy issues, it's also producing a new generation of highly skilled and experienced public service researchers. The research chairs have already fulfilled an important role in this province and they deserve continued support.

The Panel believes that greater attention must be given to the goal of making relevant research evidence and other information on best practices and successful crime reduction approaches available to communities across British Columbia.

Monitoring Performance

MEASURING CRIME AND VICTIMIZATION

We must rigorously measure and track our successes and learn about the challenges we face in reducing crime. As Geoffrey Cowper noted in his report, "The suggestion that public goals for the reduction of crime be established and publicly reported across the province implies that system-wide information gathering and reporting exists alongside system-wide goals."[139]

Crime statistics are not as reliable as one might assume in measuring how much crime is being committed in a community. Measures should be taken immediately to address issues that have already been identified in relation to criminal incidents coding and reporting by the police and ensure greater consistency in measuring crime and producing official crime statistics. Policy makers and the public must have confidence in the statistics which result from the recording of crime by police forces. Pressure on law enforcement to take action to reduce crime and efforts to use crime statistics to measure police performance should not create a situation where there are strong incentives to produce self-serving crime statistics.[140] As the Province gets serious about measuring progress in reducing crime, a robust monitoring and auditing system should be put in place to protect the integrity of official crime data.

Official crime statistics, by themselves, do not provide a satisfactory measure of criminal activity in the province or in any given community. Some of those who spoke to the Panel advocated for conducting regular and rigorous victimization surveys and making their findings readily available to all stakeholders and every community.

139 Cowper, D. G. (2012). *A Criminal Justice System for the 21st Century, Final Report to the Minister of Justice and Attorney General Honourable Shirley Bond,* Victoria, August 27, 2012, p. 71.

140 Consider for example the difficulties experienced in other jurisdictions where official crime data loses its credibility in the eyes of policy makers and the public. See, for example: House of Commons, Pubic Administration Select Committee (2014). *Caught Red-handed: Why We Can't Count on Police Recorded Crime Statistics.* London: UK, House of Commons, April 9, 2014.

MEASURING RECIDIVISM

Recidivism is a very important and central measure of performance for the criminal justice system. Preventing reoffending, whether it is expressed in terms of specific deterrence, incapacitation or rehabilitation, is among the main objectives (with retribution and denunciation) of criminal law and the whole criminal justice system.

There may be some disagreement about exactly how recidivism is to be measured, but there is rarely any dispute about the fact that a criminal justice intervention or program that is unable to significantly prevent reoffending is a failure. Yet many of these failures persist and continue to burn our public resources.

Operational definitions of recidivism vary considerably depending on who is measuring and why they are measuring it. Some of these definitions are trivial or even defy logic, while others are self-serving or loaded in a particular way to support a particular argument.

We are setting the bar so low: celebrating a reduction in recidivism of a few percentage points while the overall recidivism rates continue to demonstrate the utter failure of the system as a whole. People in the system itself have frequently abandoned the idea.

One basic problem responsible for this state of affairs is the insistence on defining reoffending in terms of a singular event. A program in which an offender successfully participates is meant to have failed if the offender commits a new offence (no matter what the offence) within a set period of time. This demonstrates a total lack of understanding of what is already known about desistance from crime. Desistance from crime is a process and not a moment (or a single event). Behaviour patterns that have been years in the making and have been consistently reinforced by both the environment and failed criminal justice interventions cannot be eradicated overnight and replaced spontaneously by new, more pro-social patterns.

There is no standardized method of measuring recidivism in the province and it would be important to develop and impose consistent standards. Measures of recidivism are also measures of performance and accountability for many criminal justice and law enforcement agencies.

MONITORING THE SUCCESS OF CRIME REDUCTION INITIATIVES

The Ministry of Justice is currently working with key stakeholders and academia to develop a performance management framework and enhance the quality and availability of police data to measure policing in a consistent manner across the province and support better performance management practices. The recently released JPSC Strategic Plan tentatively suggests a number of potential performance indicators that could be developed with respect to crime reduction and public safety.

The Panel hopes that the ministry will build a robust and valid 'basket of measures' that can be consistently applied across the province and in each of its cities and communities to measure crime reduction efforts and do so in a manner that reflects provincial as well as local crime reduction priorities. Such a basket of measures could provide an indicator of police performance, but it should not be reduced to that.

> *"Shining the spotlight on the crime rates in B.C. provides motivation for change. As part of putting in place a crime reduction initiative, setting stretch targets and then reporting on outcomes will help hold all our feet to the fire and put pressure on communities where more work is needed."*
>
> **CHIEF CONSTABLE BOB RICH**
> ***and* A/COMMISSIONER NORM LIPINSKI**
> ***– on behalf of the BC Association of Chiefs of Police***

The Panel heard from individuals and groups who suggested that people have stopped reporting certain kinds of crime. In the absence of data from a proper survey of victimization, it is impossible to confirm whether, and if so, on what scale, this poor public reporting of crime by victims and members of the public is really occurring.

It would be important to link specific crime reduction objectives and outcomes to provincial policing priorities and reflect them consistently in the Province's Policing and Public Safety Plan.

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