The Canadian Bar Association
British Columbia Branch

JUSTICE IN TIME

A Submission to

GEOFFREY COWPER, Q.C.

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British Columbia Branch
Prepared by the Advisory Panel on
Criminal Justice Reform
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Preface

The Canadian Bar Association nationally represents over 38,000 members (lawyers, judges and law students) and the British Columbia Branch (the CBABC) has over 6,700 members. Its members practice law in many different areas and the CBABC has established 77 different Sections to provide for lawyers who practice in similar areas to participate in continuing legal education, research and law reform. The CBABC also establishes special committees from time to time to deal with issues of interest to the CBABC.

This submission was prepared with the assistance and advice of the Advisory Panel on Criminal Justice Reform (the Advisory Panel) for the CBABC. The CBABC Executive constituted the Advisory Panel in March 2012 to provide advice and recommendations to the Executive and to prepare the Branch's response to Mr. Cowper's request for submissions.

The comments expressed in this submission reflect the views of the CBABC as a whole and are not necessarily the views of each individual member. The Advisory Panel was composed of the following members of the CBABC:

- Stephen McPhee, Q.C. – Chair
- Eric Gottardi
- Sharon Matthews
- Raymond Phillips
- Jennifer Reid
- Duncan Shaw, Q.C. (retired Supreme Court justice)
- Sandra Watson
- Herb Weitzel (retired Provincial Court judge)
- Janet Winteringham, Q.C.

EXECUTIVE SUMMARY

This submission addresses the four major questions asked by Mr. Geoffrey Cowper, Q.C., as Chair, *Justice Reform Initiative*:

- What are the major issues affecting timely access to criminal justice?
- What steps or initiatives have been taken or are underway that could improve matters?
- What short-term measures could be put in place?
- What long-term measures should be put in place?

In responding to these questions it became apparent to the Advisory Panel that the dramatic funding cuts made a decade ago have had an impact on almost every issue or problem that has arisen since that time.

The Advisory Panel has identified three major causes of the failure of timely justice in criminal matters in the BC courts:

- The systemic reduction in resources allocated to key components of the justice system – notably cut-backs to the Legal Services Society, the Provincial Court judiciary, court services, and correctional services and attrition hiring policies with regard to Crown Prosecutors;
- The increasing complexity of the law and criminal justice processes in general (in particular, mega trials)– and the impact of *Charter* litigation and disclosure issues;
- The closure or failure of mental health services, addictions and FASD facilities, assessment, treatment and diagnosis.

The Advisory Panel provides 25 recommendations (short term and long term) to address these causes in a manner which is consistent with the rule of the law and the enhancement of the public confidence in the justice system.

As a result of a decade of underfunding, BC's criminal justice system has seen an increase in the number of stays of proceedings and delays throughout the system.

These adverse consequences have resonated with the public and garnered the attention of the government. However the criminal justice system is not the only area of the system facing challenges. There continues to be serious delay and a lack of access to justice in family law and the area of civil law known as poverty law. These effects are directly related to the withdrawal of resources from the justice system over the last decade. While the impact of cutbacks in these facets of the system is not the subject of this submission, they are important to note because their impact spreads throughout the system.

One cannot focus attention or resources on the criminal justice system to the exclusion of other component parts of the entire justice system. To do so would put those parts of the system at risk, while only attending to a part of the system that resonates with the public, the media and the politicians.

While it is appreciated that the concept of "systems" thinking and modeling to achieve efficiencies is attractive, the experience of those working in our justice system is that, if that means uniformity, there are significant practical unpredictable forces that make that a difficult objective to achieve. In fact, some reforms and cutbacks can and have created inefficiencies by attempting to impose uniform systems on the human dynamic to create efficiencies and control uncertainty. The Criminal Case Flow Management system is an example of this.

A key component of any change is that it is properly resourced to meet its goals and that it be properly measured to determine if it is successful.

While there are certainly efficiencies to be gained, the reality is that almost every justice system stakeholder is already doing more with less. It would be naïve to think that further savings can be found in a review or overhaul of a system that has, for almost a decade, shouldered the responsibility for adjusting to more complex and more intricate cases and law. For example, the Ministry of Justice estimates that the Crown resources necessary to prosecute criminal cases have risen by 20% over 10 years.

The justice system, while one of the three branches of our democratic society – along with the legislative and executive branches - takes up only four percent of the entire provincial budget. The amount of funding required to restore the judicial branch to a more appropriate and functional level amounts to little more than a rounding error in the healthcare budget, but the importance of this branch is such that we tend to take its stability and fortitude for granted.

It is imperative that the actors in the justice system be included in developing strategies for change. Contrary to the statements in the government's Green Paper, it is the CBABC's experience and view that the primary participants – courts, lawyers, court services, and justice ministry bureaucrats – have displayed a willingness to engage in real attempts at improving the system. A theme throughout this submission is that this expertise and experience should be used in the development of reform strategies.

Judges and lawyers are, by their nature, critical thinkers, and consider it their responsibility to preserve and promote the features of the justice system which serve the public and protect the public.

There have been a number of justice innovations, on both the civil and criminal sides over the years, that have been driven by judges and lawyers, and there are initiatives underway that pre-date the Green Paper – such as the Provincial Court scheduling review (mentioned below), that are indicative of the willingness of justice system actors to improve the system where possible. (Attached as Appendix A is a list of initiatives).

It is apparent from recent statements by the Ministry of Justice that the Ministry sees the solution to these issues to be to move dispute resolution out of the courts and into administrative tribunals controlled by the government, rather than putting any further money into the courts and justice system.

The consequences of this are significant. The judiciary and courts are constitutional pillars of our society for the precise reason that government should not have

dispute resolution power concentrated in their hands. While it may be efficient, it is dangerous and entirely inconsistent with the principles of separation of powers and the rule of law.

The courts have a tradition of leading social change on important issues that would typically not change in an environment of partisan politics. The "rights based" society we have created stands to lose if there is not an independent, properly resourced justice system that is free from political or other interference.

A PRELIMINARY OBSERVATION

Are we employing the right amount of time and resources to get it right, not just to get it done?

Efficiency within the system is desirable, but it must be recognized that the criminal justice system is designed to provide protection for the participants in the system and such a design produces inherent challenges to efficiency. A criminal justice system which is based on the presumption of innocence and in which the processes are determined by the rule of law is inherently more complex and the individual cases take longer than they would in a system not governed by the rule of law and the presumption of innocence. That distinction is valid even in evolved democratic states.

A case in point in the riots in the United Kingdom last summer and the oft-reported factoid of arrests being made much more quickly than occurred after the Stanley Cup riots in Vancouver. In the UK, the right to remain silent does not exist as one of the safeguards to protect the presumption of innocence as it does in Canada. In the U.K., the evidence to justify an arrest can be more easily obtained through interrogation.

Speedy justice is not the ultimate goal; it is one goal that must be balanced against the proper time and reasonable deployment of resources to ensure that justice is just: that it complies with Canadian constitutional norms.

On the other hand, where systemic changes, amount of resources and deployment of those resources can improve the efficiency and timeliness of justice while respecting the constitutional norms, the constitutional norms will be enhanced by greater speed and that is a laudable goal.

FACTORS AFFECTING TIME TO JUSTICE

The Minister of Justice and Attorney General (the Minister) states in the Green Paper, *Modernizing British Columbia's Justice System*,[1] that the issue of delay in the criminal justice system has reached unacceptable levels, and that the number of stays as a result of delay in the past year bears out that concern.

The CBABC has identified key causes of these delays. These causes have been building over the past decade and must be remedied as a matter of high priority to regain public confidence in the justice system and to safeguard the role of an independent judiciary in our system of governance. The failures within the criminal justice system and proposed solutions to correct the underlying problems are described in this section.

In its 2011 review of BC's provincial justice system, the Internal Audit & Advisory Services (IAAS) of the Ministry of Finance made the following findings and determinations:[2]

a. Demand for justice services has seen a steady increase and the system is facing cost pressures as a result;
b. There are increasing challenges, including the increasing complexity of crime and complexities in managing the system itself;
c. A lack of suitable performance management makes it unclear how much of the pressure on the justice system is due to increasing case complexity;
d. Performance management is inconsistent and not integrated;

[1] Minister of Justice and Attorney General, *Modernizing British Columbia's Justice System: Green Paper*, February 2012 (Green Paper); source: http://www.ag.gov.bc.ca/public/JusticeSystemReviewGreenPaper.pdf

[2] Internal Audit & Advisory Services, Ministry of Finance, Review of the Provincial Justice System in British Columbia, September 2011 (IAAS Report); source: http://www.ag.gov.bc.ca/public/JusticeSystemReview.pdf.

e. There are indicators that show the increasing pressure on the courts and the registries;[3]
f. There are no criteria to assess the success of pilot projects and initiatives.

These findings are similar to the experiences of those on the Advisory Panel as discussed in more detail below.

1) Resources

The Green Paper says that increased costs of the justice system are unacceptable, especially in a system dealing with fewer cases and a society facing lower overall crime rates. Unfortunately, the Green Paper aggregates expenditures of the Public Safety and Solicitor General (PSSG) and the Attorney General (AG). Therefore, while their combined budget of almost $1 billion has increased by about $300 million since 2002/03,[4] the bulk of that increase was for the PSSG.[5]

When the AG expenditures are looked at separately, however, a different picture emerges. It becomes clear that there has been a decrease in real spending in criminal justice over the past decade. Several examples of insufficient financial support concern the Advisory Panel and are detailed below.

In the face of increasing complexity of society as a whole, leading to increased complexity of cases and the laws which govern us, there have been cuts to many aspects of the justice system. The aim of those cuts has been to create overall savings in government. They have not appeared to have been supported by an analysis of the appropriate amount of resources to fund the system to work properly and efficiently.

[3] For example, the total number of new provincial Court cases increased from 216,152 in 2006/07 to 231,899 in 2010/11; over the same period, average wait times to schedule adult criminal trials have increased from 8.3 to 10.3 months; the number of criminal cases pending for more than 180 days increased from 17,862 to 18,391.
[4] Green Paper, at page 14.
[5] The PSSG budget was about $400 million in 2002/03 and is now at almost $600 million.

The revenue side of the equation is not addressed in the Green Paper. As was disclosed in evidence in the recent decision of *Vilardell v Dunham,*[6] the AG seeks to recover the costs of running the courts in BC through user-pay fees including filing fees, hearing fees and probate fees. Since 1998, the AG has recovered around 100% of all civil case expenditures - including notional rental for courthouses that were built with taxpayer money and are owned by taxpayers. Even if hearing fees are taken out of the equation, the government generates significant revenues from filing fees and probate fees and will continue to do so.

When these facts are taken into account, the Green Paper's suggestion that the court system has become an increased burden on taxpayers is incorrect.[7]

Our society can realize significant benefits if the various components that make up our criminal justice system are properly resourced. Numerous recent reports prepared by credible organizations and initiatives have outlined the need to strengthen our criminal justice system. Properly supporting our system would provide key benefits, including:

- Reduced spending and demand on other ministries and enhanced benefits to communities and the economy as a whole.
- Significant cross-ministry benefits, beyond just the economic benefits.
- Strengthening of the rule of law and public confidence in the justice system.
- Support for an independent judiciary, so that it is free from political or other interference, and can stand as an essential element in our free and democratic society.

[6] 2012 BCSC 748, at para 75 onward (*Vilardell*).
[7] *Vilardell* at para 95 onward.

1.1) Judicial Capacity

For several years the provincial government has applied a policy of economy to the Provincial Court justice system. As a result, there has been a substantial diminution of judges, sheriffs and court staff available to do the work of the court.

On the other hand, there has been a marked increase in the complexity of the cases that are brought before the Provincial Court. The increasing reliance on the *Charter* has caused an expansion of the issues and the time necessary to hear and decide the issues. At the same time, there has been a steady increase in the overall complexity of cases. In the result, the time to process cases continues to increase. Thus, the court system has been squeezed between the government policy of decreasing personnel and the increasing time it takes to process cases.

This section will consider the loss of judicial capacity over the past decade or so. In a later section (*3: The Charter,* below), the impact of the *Charter* on the court system as a whole will be considered.

Provincial Court is the principal court for criminal trials in BC. Unlike section 96 courts, the BC Provincial Court is established by BC legislation, which does not provide for a fixed complement of Provincial Court Judges.[8] Instead, judges are appointed at the discretion of the Minister of Justice from the list of approved candidates supplied by Judicial Council.

When considering judicial complement, it is important to distinguish between full time judges and those on the senior judges program. The senior judges of the Provincial Court work effectively 45% part-time and two senior judges are included in the Full Time Equivalent ("FTE") calculations used by the government. Therefore, while the number of senior judges may be increasing, there are fewer full-time judges remaining on the Bench.

[8] *Provincial Court Act*, R.S.B.C. 1996, c. 379.

In Supreme Court, the corresponding "supernumerary judges" are not counted in the fixed complement of full-time judges in that Court. They sit in addition to the full time judges; they are not blended into the same category.

Why does the shifting proportion within the Provincial Court of senior part-time judges to full-time judges matter? There are several reasons. Firstly, it is much more difficult to schedule a senior judge who sits part-time and is paid only for the time when he or she is sitting. Two senior judges cannot be scheduled as flexibly nor as efficiently as one full-time judge.

Secondly, when the Provincial Court releases its figures for its existing FTE complement of judges, two senior judges are counted as the equivalent to one full time judge. This approach inflates the apparent capacity of the Bench. In fact, statistics show that there has been a gradual loss in judicial capacity within the Provincial Court, which is illustrated in the following table.

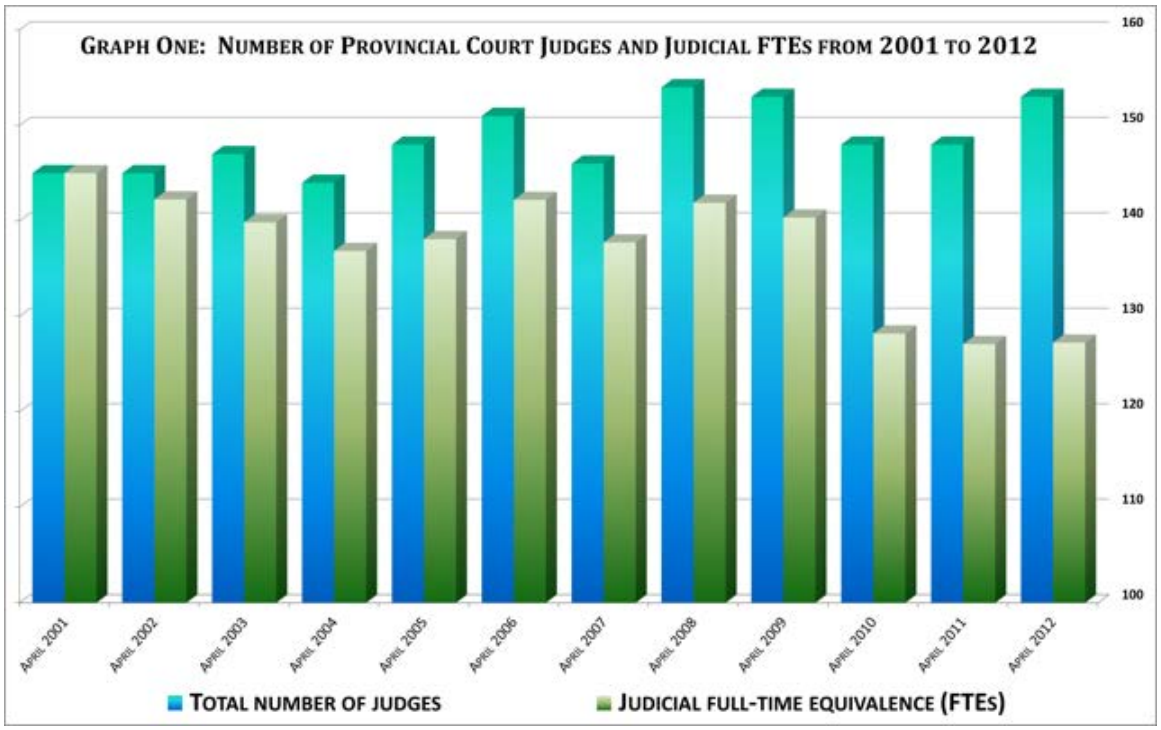
Table One calculates the FTE for Provincial Court judges throughout the province, adjusting for the number of senior judges on the basis of their part-time status (one senior part-time Provincial Court judge is considered to be equal to 0.45 of a full-time judge).

Table One: Total Provincial Complement of Provincial Court Judges

As of…	Number of full-time PC judges	Number of senior (part-time) PC judges	Total number of judges	Judicial full-time equivalence (FTEs)
April 1, 2001	145	0	145	145.0
April 1, 2002	140	5	145	142.25
April 1, 2003	134	13	147	139.85
April 1, 2004	131	13	144	136.85
April 1, 2005	130	18	148	138.1
April 1, 2006	135	16	151	142.2
April 1, 2007	131	15	146	137.75
April 1, 2008	132	22	154	141.90
April 1, 2009	130	23	153	140.35
April 1, 2010	112	36	148	128.20
April 1, 2011	110	38	148	127.10
April 1, 2012	107	45	153	127.25

The data in Table One clearly shows that, while the total number of judges has increased, there has actually been a loss of judicial capacity; from a high of 145 FTEs in 2001 to just over 127 FTEs in 2012. While the number of judges has increased by 5.5% during this 12-year period, the Provincial Courts have in fact suffered a loss of judicial capacity of more than 12%.

This decline in judicial capacity compared to the growth in the number of judges is shown graphically in the following illustration.



The Province believes that, by hiring more part-time senior judges, it has eliminated the need to hire additional full-time Provincial Court judges, thereby saving money by not replacing judges. However, if the trend of increasing the complement of senior judges continues, in ten years at least half the Provincial Court Bench will be composed of senior judges, which will only exacerbate the current significant scheduling problems.

The effective reduction in the number of Provincial Court judges makes meaningful case management less and less likely. Effective judicial case management requires that individual judges be seized of cases at an early point in the proceedings so they can then play an informed role in managing the case and urging the parties, in an appropriate way, to focus the preliminary inquiry or to narrow the issues for greater efficiency should the matter proceed to trial. Regrettably, with effectively fewer judges, such in-depth participation by a judge, who will have even more cases to manage, is highly unlikely.

The Senior Judges Program should not to be expanded in order to increase the complement of Provincial Court judges. Currently, approximately 40% of the sitting judges were hired under this Program. A judge can be on the senior program for seven years, and the retirement age has been extended to 75.

The complement should be stated in reference to the work and output expected of full-time sitting judges. The contribution of part-time judges within this complement must also be taken into consideration so that the commitment of those resources within the system is recognized, rather than being a mathematical assessment of the time contributed by part-time judges relative to full-time judges.

A fixed complement of judges also offers the benefit of de-politicizing the decision whether to appoint judges to replace Provincial Court judges who retire, resign, or elect to serve as senior judges. It eliminates the need for a "case" to be made to Treasury Board each time. It also avoids the situation where several vacancies build up over time, along with the attrition of other support staff, so that simply recovering past service levels requires radically increased expenditure and delays in rebuilding the system infrastructure.

Obviously, the number of judges in the full complement must be based on rational measurable factors that reflect prevailing circumstances and can be used to either increase or decrease the complement. With regard to the metrics to adjust the complement on a go forward basis, the CBABC suggests the following:

- BC population
- crime rates
- marital breakdown rates
- ratio of judges to Crown Prosecutors
- average length of criminal trials
- average length of civil trials

- implemented, pending or anticipated changes in law, court rules or procedures, policing, prosecutorial processes and policies, and/or government policy which are likely to affect the volume of cases or the resources they require within the Provincial Court
- average time to 2 day trial compared to the OCJ standard (8 months)
- average time to 1/2 day trial compared to the OCJ standard (6 months)
- average time to a settlement conference in civil claims compared to OCJ standard (2 months)
- average time to a trial after settlement conference in civil cases compared to OCJ standard (4 months)
- average time to a child protection hearing compared to OCJ standard (3 months)
- average time to a family trial compared to the OCJ standard (4 months)

The assessment of the complement should take place every two to three years by Judicial Council which consists of lawyer and non-lawyer appointees of the Provincial Court, the Provincial Court Judges Association, the Law Society, the CBABC and the BC Government. Judicial Council should review the complement and make a recommendation as to whether it stay the same, be increased or be decreased. If it is to be increased or decreased, Judicial Council should make a recommendation as to the new appropriate complement.

It is recommended that
(a) the Provincial Court should have a fixed complement of full-time judges, and
(b) the Judicial Council should review that complement every 2-3 years, with a recommendation for the go forward complement.

1.2) Legal Aid Cut-backs

In his 2011 report, *Foundation for Change*,[9] Leonard Doust documented the 2002 cuts to BC's legal aid system and their impact in subsequent years.

At that time there had been several changes to legal aid. The BC government had cut the Legal Services Society (LSS) budget by 38.8% over three years (from $88 million in 2001/2002 to $55 million in 2004/2005) and also changed LSS's statutory mandate. Other changes had included closing about 45 branch offices, including community law offices and native community law offices, and eliminating area directors. These had been replaced by seven regional centres and 22 local agents in smaller communities.[10] Poverty law services had been eliminated and family law services had also been reduced. There had been a further closure of two LSS branch offices in 2010.

In their 2012 report, the BC Civil Liberties Association has described the situation in these terms:[11]

> *[BC's] justice system is already handling 14.8% more cases with 30-40% fewer resources, and is on the verge of collapse. As the past decade of budget cuts have vividly demonstrated, cost-cutting measures can have radical and far-reaching effects on the system for many years to come, including on mental health, homelessness, justice and public safety.*

The government's cuts to the LSS were made without consultation with justice system stakeholders and have resulted in an increase in unrepresented persons appearing in court. That in turn increases court time and affects the ability of Crown to negotiate pleas and come to agreements on admissions of facts (which would shorten the time required for hearings).

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[9] Public Commission on Legal Aid in British Columbia, *Foundation for Change* (Leonard T. Doust, QC, Chair) March 2011 (Doust Report).
[10] Doust Report, at page 40.
[11] BC Civil Liberties Association *Justice Denied: The Causes of BC's Criminal Justice System Crisis*, 2012, at page 11.

These cuts also create a shortage of duty counsel, other than for first appearances and bail hearings. Worse, often duty counsel are not available for bail hearings outside the larger urban centres.

Legal aid is rarely if ever provided for breaches of conditions set by the court. Sometimes one legal aid lawyer is assigned to the lead file but a different lawyer is assigned to breaches. This leads to obvious inefficiencies.

Delays in rural proceedings are often caused because there is no local presence for legal aid. For example, it sometimes takes up to four appearances, involving up to four months of court delay, while the LSS attempts to locate counsel.

It is recommended that the government immediately increase legal aid funding so as to allow the Legal Services Society to provide sufficient legal aid services to the public.

The use of local agents is, in most cases, a wholly inadequate substitute for the former regional and community law offices and native law offices. Local agents are primarily tasked with assisting clients in making applications to obtain counsel and provide them with general legal information about the legal system.

Self-help models are important and useful in advising individuals of their rights, but they are an inadequate substitute for legal advice and representation. The self-help model does not take into account low levels of literacy, particularly amongst low-income earners. Forty percent of BC residents have literacy rates that affect their capacity to function in an increasingly complex world. Many residents have English as a second language.

The most serious legal aid inadequacies are in Aboriginal and rural areas, and they extend to all types of services, not simply in relation to appearances. It is difficult for litigants in small cities and towns to get any real assistance when duty counsel is only available on a limited basis: i.e., three to four hours about two to three times per week. In some communities the court only sits once a month, or less, and duty

counsel is only available during the week that the court is in session. Cases then get postponed for months on end, in order for clients to get legal advice, before the cases are even set down for trial. In the alternative, they are set down for trial immediately without clients being fully aware of their legal options.

For these reasons, the Advisory Panel endorses the Doust Report's recommendation #4.

It is recommended that:
(a) regional legal aid centres be established to serve as the point-of-entry hub for core legal aid service;
(b) mobile outreach services be provided to those who cannot access the regional centres due to geographic, cultural or other barriers;
(c) the team approach to the delivery of legal aid services be enhanced, with greater emphasis on the role of suitably trained and supervised community advocates and legal advocates;
(d) where warranted, the rule of duty counsel and staff lawyers be expanded;
(e) there be greater integration of legal aid services with other support services available at the centres to meet client needs in a more holistic manner.

1.3) Courthouse Closures and Justice System Cuts

As noted above, 24 courthouses were closed in 2002, and this cost-saving decision has simply added to the problem of timely access to justice for many people living outside of BC's major urban areas.

Courthouses in the following locations were closed in 2002 (alphabetical order):

1. Burnaby
2. Chase
3. Delta
4. Hope

5. Kimberley
6. Lytton
7. Maple Ridge
8. Oliver
9. Parksville
10. Squamish

Courts were converted to circuit courts in the following locations (alphabetical order):

11. Castlegar
12. Chetwynd
13. Creston
14. Fernie
15. Grand Forks
16. Houston
17. Invermere
18. Kitimat
19. Lillooet
20. Merritt
21. Princeton
22. Revelstoke
23. Vanderhoof
24. 100 Mile House

To compound the problem, the closure of two dozen courthouses in 2002 has made justice inaccessible for many people living in rural or remote areas of the province. (This issue is addressed in more detail in section 1.3, below.)

The courthouse closures combined with a lack of public transportation makes it that much more difficult for the public to get to the remaining courthouses, which are now much further away from where they live. While some videoconferencing is available, some towns have no capacity to provide this service, and for those with some capacity, the technology is not fully reliable.

At the present, teleconferencing is not sufficient for court appearances, as it is not an effective way to make a case. Skype is unsatisfactory, as the quality is variable and depends on the internet connection, camera and computer being used in the remote location. Despite its limitations, however, videoconferencing has potential as a useful tool to be used throughout the province, but probably not for several years.

Videoconference infrastructure can be very expensive and, as a result, regional centres must be established to rationalize the cost. Even with such facilities in place, there is a still a need to travel to the regional centres from the smaller communities. The practice of having the accused appear by videoconference was established over 10 years ago, but this option is not yet available or properly developed throughout the province.

It is recommended that videoconferencing facilities be set up in local RCMP stations or other appropriate locations within rural communities.

1.4) Number of Crown Lawyers

The Criminal Justice Branch (CJB) has been facing annual budget cuts since 2009.[12] The branch addressed those cuts primarily by reducing or delaying hiring. When lawyers and other staff left the branch they were not replaced. With increasing pressures in the Criminal Justice Branch the 2012/2013 budget has been increased from the two previous years, but still lags behind 2009/2010. With the partial

[12] Budget numbers: 2009/2010 at $119,595,000; 2010/2011 at $112,600,000; 2011/2012 at $106,761,000, and 2012/ 2013 $ $113,616,000

restoration of the funds in the 2012/2013 budget, the Branch will be looking at how to allocate resources to address the workload.

The CJB has lost a number of very experienced and senior prosecutors in the past few years due to retirement. In order to meet the budget pressures the branch is hiring inexperienced lawyers. A residual problem, however, is that many of the Crown offices were depleted by the earlier attrition policy, and in the Lower Mainland in particular, major court cases and the organized-crime unit seconded Crown lawyers without necessarily replacing them with new lawyers to work in other areas of criminal law.

British Columbia has approximately 460 Crown prosecutors throughout the province. It is projected that a total of 58 of these employees are "at risk" for retirement in 2012. This number is composed of 49 senior counsel and 9 managers. This projection includes those who satisfy the "rule of 85" (age plus service must equal 85), plus those reaching 62.5 years of age without the rule of 85 being met, as well as those who are already eligible but have continued to work.

The loss of Crown lawyers through attrition at the senior level means the loss of lawyers with substantial experience and knowledge, which is significant in the efficient handling of criminal cases. If there are new hires of junior Crown Prosecutors, there will still be a shortage in experience which may result in less effective and efficient prosecution of cases overall.

There is a policy in place that has not been adhered to in recent times of ensuring there are 2 Crown Prosecutors and 2 staff for each Provincial Court judge.

It is recommended that
(a) the number of Crown Prosecutors needs to be increased to match the capacity (as opposed to simply the numbers) required to reduce the current backlog and restore public confidence,
(b) once that backlog has been removed, staffing levels be set in consultation with the Crown Counsel Association to ensure that appropriate service levels are being maintained; and
(c) hiring budgets reflect the need to attract and replace senior Crown with lawyers who have experience beyond the entry level.
(d) the policy that there be 2 Crown Prosecutors and 2 staff for each Provincial Court Judge be adhered to.

1.5) System Costs of Unrepresented Litigants

Unrepresented litigants can significantly increase the time involved in processing these accused through the criminal justice system. Delays in Provincial Court are closely connected to the prevalence of self-represented litigants and the fact that they use a disproportionate amount of taxpayer-funded court resources and time. This is true of unrepresented criminal litigants as well as unrepresented family and civil litigants. At present there are unrepresented litigants in Provincial Court in 90-95% of family cases, 40% of criminal cases, and 90% of civil litigants.[13]

As the Green Paper authors note, the justice system is an integrated system, so the cases that go through the courts affect each other because they are all competing for the same resources, even though they may be quite different. This issue must be assessed and addressed systemically.

In 2009, more offices were closed, bringing the number of regional offices down from 7 to 2 and cutting a further 40% of staff. This was done to stave off further

[13] *Final Report of the 2010 British Columbia Judges Compensation Commission*, Report to the Attorney General of British Columbia and the Chief Judge of the Provincial Court of British Columbia, Pursuant to section 5(1) of the *Judicial Compensation Act*, September 20, 2010, at page 19; source: http://www.ag.gov.bc.ca/judicial-compensation/info/2010-JCC-FinalReport.pdf

drastic reductions in service due primarily to reductions in funding from non-governmental sources.[14]

The provision of advice and information from non-lawyers was enhanced, while legal representation in court was decreased. While the increased provision of on-line and written legal advice helped some people, those people with low literacy skills or whose problems require judicial intervention have seen a severe reduction in the assistance and representation that could efficiently resolve their problems.

The clear impact on the courts has been that more unrepresented people are taking more staff, judicial and other time. The large numbers of unrepresented litigants in family, poverty, and criminal law slow down all cases proceeding concurrently and following them. In other jurisdictions, the inefficiency factor of unrepresented litigants has been conservatively estimated at 20%.[15]

The Doust Report concluded that legal aid should be fully funded as an essential public service.[16] This conclusion was reached following a comprehensive review of an already much-studied legal aid system.

Legal representation is important to ensure the accused's right to a fair trial and to safeguard the presumption of innocence. Legal representation also provides cost savings to the system, and the unrepresented persons create cost and inefficiency, albeit difficult to measure.[17]

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[14] Legal Services Society, *Service Plan 2010/2011 - 2012/2013*; source: http://www.lss.bc.ca/about/annualReports.php.

[15] Price Waterhouse Coopers, *Economic Value of Legal Aid: Analysis In Relation to Commonwealth Funded Matters With A Focus on Family Law* (fn xviii in CBABC Economic Value of Legal Aid Briefing Note).

[16] Doust Report page 27.

[17] See Sharon Matthews' Briefing Note, "Making the Case for the Economic Value of Legal Aid" where she states: "It is clear that through no fault of their own, unrepresented litigants add to the delays in our courts. Police officers and social workers are tied up in these delays instead of being in communities doing work in the public interest. While we are not in a position to calculate these costs a[t] this time, it is reasonable to assume that these costs are significant. The criminal research [Ab Currie, "Unmet Need for Criminal Legal Aid: A Summary of Research Results," 2006, Department of Justice] on criminal legal aid and unrepresented litigants in Canada has found that:

- There is a high percentage of court appearances for unrepresented accused in criminal court;
- Up to 27% of unrepresented accused received jail sentences;

Despite difficulties in measurement, there are three stages during criminal prosecutions where legal representation would undoubtedly provide an overall cost-savings to the system: (i) pre-trial processes, (ii) plea discussions, and (iii) trial.

With respect to pre-trial processes, the unrepresented accused typically appears in court three or four times before attending to issues such as arraignment and trial scheduling. In addition, disclosure materials can be voluminous, and as policing techniques become more sophisticated so does the underlying disclosure package. Where the accused is represented by counsel, the Crown can seek reasonable admissions, thereby reducing the time required to deal with non-contentious yet technical matters. Witnesses, such as doctors or forensic experts, can be excused from attending the trial. The unrepresented accused simply cannot make decisions regarding admissions in the same way as a lawyer can, and the Crown is thus required to call and proceed with the entire case.

Second, plea negotiation is an essential exercise for Crown and defence counsel. As identified in the Doust Report, approximately 80% of criminal cases are resolved by plea discussions where the accused is represented by counsel.[18] The unrepresented accused is far less likely to engage in plea discussions with the prosecutor, thereby incurring charges for trial and losing the opportunity for early resolution and the obvious cost savings to the system. Plea resolution is also the chance for system participants to address the underlying cause of criminal behaviour. For example, the successful treatment of drug addiction or anger management issues can, particularly with first-time youth offenders, assist society by ensuring that the offenders do not engage in future criminal conduct. Even when the unrepresented accused opts to plead guilty, the Crown will often seek a pre-sentence report, requiring that the accused attend at a meeting with a probation officer; when the pre-sentence report is submitted to the court it may contain a statement from the accused professing

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- Dozens of errors are made by unrepresented accused in the court process that put accused at a disadvantage, including pleading guilty when they have a viable defence; and
- 60 % of unrepresented accused at final appearance were convicted.

[18] Doust Report, at page 14.

innocence. Time and resources are thus lost as the guilty plea is inevitably struck and the matter is remitted to the trial list.

Defence counsel play a significant and fundamental role in criminal justice system efficiencies. Skilled defence counsel will dramatically reduce the need for judicial resources by resolving complex cases either by way plea negotiation or by conducting a focused defence for the client. Where appropriate, admissions are made, witnesses are excused and court time is reduced.

It is recommended that the Doust Report recommendation #6 be implemented, which calls for increased provincial and federal government funding through a stable multi-year granting process.

1.6) Probation and Corrections Resources

In its 2012 submission, *Justice Denied: The Causes of BC's Criminal Justice System Crisis*, the BC Civil Liberties Association documented the decrease in the provincial government's funding of BC's correction system, a reduction of 29% since 2001.[19] The result of this funding cut has been an increase in the average caseload per probation officer, which in turn means that each officer now has less time to devote to rehabilitation programs that are intended to reduce recidivism rates and protect the public.

A lack of corrections officers has also led to an unacceptably high ratio of inmates to officers, which has the further effect of decreasing the level of safety for both within our prison system.

Finally, there is a need to invest more in inmate correction programs that are designed to stop inmates from relapsing back into crime after their release. Such investments can also help to reduce health care and policing costs once inmates are released from our prisons.

[19] BC Civil Liberties Association *Justice Denied: The Causes of BC's Criminal Justice System Crisis*, 2012, at page 27.

The Advisory Panel agrees with the BCCLA's analysis of the impact of cutbacks within our corrections system and supports its recommendations as set out on pages 27 to 31 of its report.

It is recommended that

(a) the overall or average caseload per probation officer be reduced;

(b) the inmate-to-corrections officer ratio be reduced;

(c) funding for inmate corrections programs be increased.

2) Internal System Factors

The Advisory Panel recognizes that the criminal justice system is working harder and doing more than ever before, but as discussed above, various facets of the system are operating with significantly fewer resources than in the past. Funding is not the only problem. A number of factors that contribute to the current financial challenges spring from the way the current system operates as opposed to simply a lack of funding.

2.1) Disclosure

Evidence is the engine that drives the criminal justice system. Evidence is necessary for police agencies to investigate crime properly and it is necessary for the Crown to properly assess the relative strength and public utility of a particular prosecution. When there is meaningful disclosure, evidence can allow defence counsel to assist their clients and the courts to avoid wrongful conviction. Evidence is also crucial to the trier of fact in discharging the duty to determine whether the accused is guilty or not guilty. The constitutional importance of the timely disclosure of this evidence has been commented on time and again by our highest Court.[20]

[20] *R.* v. *Stinchcombe*, [1991] 3 S.C.R. 326; *R.* v. *Taillefer*; *R.* v. *Duguay*, [2003] 3 S.C.R. 307; *R. v. McNeil*, [2009] SCC 3.

When managed effectively, disclosure in a criminal proceeding can lead to greater efficiency in the court process. It often results in focused preliminary inquiries or consent committals. It often leads to shorter trials. It can also avoid the unnecessary attendance of witnesses and reduce the expense and inconvenience the system can impose on third parties, such as expert witnesses. Finally, effective disclosure can facilitate resolution discussions, the staying of charges that are not sufficiently supported by the facts, and, in appropriate cases, pleas of guilty.

Police, in pursuing all relevant avenues of investigation into criminal conduct, often gather an immense amount of information. That information must then be gathered, categorized, vetted, indexed and effectively transferred to the Crown. Recent concerns have focused on financial and efficiency costs that arise when the Crown has to meet its disclosure obligations. As noted in the *LeSage/Code Report*: "when disclosure is disorganized and incomplete it leads to constant follow-up requests from the defence and this leads to delays".[21]

The issue of "insufficient or excessive disclosure" or "disclosure management" is one of the primary causes of delay in criminal case, both large and small. In almost every case, it now takes weeks and months for the police to gather, organize and produce relevant material to the Crown and for the Crown to then prepare that material for release to the defence. It is equally common for the Defence to make multiple requests for increasingly tangential disclosure items in order to meet due diligence standards which may be misguided.

Delays in police production of information to the Crown can undermine other efficiency initiatives within the court system. Evolving technologies can result in police agencies using different software than that used by the various prosecution services. The differences in technological capabilities can lead to delays in disclosure as well. These delays can undermine the effectiveness of other reform initiatives: for example, when disclosure is incomplete, Initial Sentencing Position (ISP) documents are rendered ineffective as early resolution tools.

[21.] LeSage/Code Report page 31.

It may be useful to consider changes to disclosure rules and disclosure requirements. There may be opportunities to expedite disclosure in some categories of cases. Such approach is already taken with success in sexual and domestic assault cases. Consideration should be given to other criminal cases where steps can be eliminated and streamlined. Staged or cascading disclosure is another option.

It may be useful to consider sharing of proprietary software developed by the police for their own uses. There should be a common goal of uniformity in usage of information technology disclosure management software throughout all BC police forces.

Indeed, some initiatives are already under way in British Columbia. In October of 2011, a renewed and amended Memorandum of Understanding was signed which included significant changes to the recommended procedures related to the audio and video recordings of (a) witness statements; (b) accused statements; and (c) other recordings such as 911 calls and security videos. A best practices protocol was also signed in 2011. Its purpose was to establish minimum expectations for a standardized disclosure package. It sets out the objective of the narrative and details the component parts.

These collaborative initiatives should be encouraged and expanded to include input from all of the stakeholders in the criminal justice system.

Examples of approaches to disclosure in other jurisdictions include:

a) in Alberta, "disclosure centres" were established in Edmonton and Calgary to facilitate the co-operative and timely preparation of disclosure materials. In that model, police and prosecutors work together to assemble prosecution briefs, disclosure packages and efficient responses to requests from defence for additional disclosure materials. The cost of these initiatives is apparently shared between law enforcement and the Crown's office. In addition, operational details and responsibilities are formalized through memorandum of understanding between the

individual police agencies and Crown offices. This procedure has reportedly resulted in cost savings to the affected police agencies;

b) in England and Wales a police "disclosure officer" is responsible for examining material gathered by the police during an investigation, providing material to the prosecution and disclosing material to the accused at the request of the prosecutor. Such a system puts the question of what constitutes relevant disclosure in the hands of a specialist thus increasing the likelihood that disclosure will meet minimum constitutional standards. Only briefs approved by the disclosure officer would be forwarded to the Crown.

Yet another model is to have a dedicated on-site defence representative who assists in the preparation of the disclosure package. The defence representative reviews the package, after the police or the Crown vets it. The defence representative advises the police and the Crown about any obvious perceived gaps in the disclosure package at an early point in process. Both the Crown and the defence work from the resulting package.

Whatever the proposed solution, there must be some recognition that the increasingly large disclosure obligation on the police and the Crown is a major factor in the timely administration of justice. New disclosure guidelines should be included in the policy and operational manuals of the various police agencies and the Crown.

Finally, evolving technologies can also result in police agencies using different software than that used by the various prosecution services. The differences in technological capabilities can lead to delays in disclosure as well. The proliferation of information technology has opened up new possibilities for communication and co-operation between police and the Crown. There appears to be a large appetite for the sharing of information, policies, and "best practices." Learning from each other and sharing expertise can play an important role in removing technology-based obstacles to the production of timely disclosure.

It is recommended that
(a) the provincial government establish a provincial disclosure committee with the mandate to (i) review disclosure procedures, and (ii) issue new directives and guidelines on the scope of disclosure and its content;
(b) this disclosure committee be comprised of representatives of the police, the criminal bar (both defence and Crown), legal aid, courts administration and the judiciary.

2.2) Evidence Issues

The kind of evidence that is now available is dramatically different than what was available 25 years ago. Now expert DNA evidence is commonplace in criminal trials. Other forensic evidence is now almost "required" evidence in any criminal trial, in no small part because of the effect of television shows like CSI on juries. Evidence from cell phones, computers, GPS systems, wiretap interceptions, and "Mr. Big" operations, etc., all add to the complexity, cost and time required for a prosecution. Police agencies are solving historical criminal cases as a result of creative investigative techniques and improved technology. Again, these historical cases result in complex prosecutions.

While there has been a decrease in the overall crime rate, the complexity of criminal trials has moved in the opposite direction. In a recent MAG service plan it was estimated that the "amount of work required by Crown Counsel to prosecute a criminal case has risen by about 20 percent since 2002".[22]

[22] Ministry of Attorney General, *2010/11 – 2012/13 Service Plan*, March 2010, at page 10; source: http://www.bcbudget.gov.bc.ca/2010/sp/pdf/ministry/ag.pdf.

It is recommended that the government initiate widespread consultation with all users and providers to determine appropriate, affordable standardized technology that can then be made widely available to expedite disclosure and handling of evidence and data – both in the pre-hearing phase and during hearings.

2.3) Case Management

Case management involves Crown counsel, defence counsel and the judiciary. In any case of significance, a specific Crown prosecutor is assigned conduct of the case so that meaningful discussions with the defence can be held at an early point in the process. This can help in the early resolution of the matter, so as to avoid a trial.

It is likely that more Crown counsel would need to be hired, especially in large metropolitan areas such as Vancouver, but those additional costs should be offset against the savings from fewer long criminal trials.

If the matter proceeds to trial, the same Crown prosecutor would retain conduct of the file and attempt to work with defence counsel to make appropriate Admissions of Fact so as to narrow the issues that will be litigated. At this stage a specific judge should be assigned to the case, whether it is a preliminary inquiry or a trial. In turn, the Crown would provide that judge with a summary of the case. This would be something like an opening statement to a jury. This would provide the judge with the context for hearing any future pre-trial motions.

The *Fair and Efficient Criminal Trials Act*, S.C. 2011, C.16, amends the Criminal Code to specifically allow for the appointment of a judge as a case management judge.

Either the Crown or the accused or the judge of their own motion, may apply for case management. The criteria is whether it is necessary for the proper administration of justice. This does not preclude the case management judge hearing the eventual trial of the matter.

The judge is entrusted with promoting a fair and efficient trial, including by ensuring that the evidence on the merits is present, to the extent possible, without interruption.

Prior to hearing evidence on the merits, the judge has the power to:

a) assist the parties to identify witnesses;

b) encourage parties to make admissions and reach agreements;

c) establish schedules and deadlines;

d) assist the parties in identifying the issues that need to be addressed at trial.

Early in the pre-trial stage of the proceedings, the assigned trial judge would work with Crown and defence to set specific dates to hear pre-trial applications, such as *Charter* arguments, with related dates for filing legal briefs. These dates should be set with the Crown Counsel's schedule so as to respect Crown file ownership. Should issues of non-disclosure arise, they could also be heard at these pre-arranged court appearances.

Case management, in which a judge is assigned to a specific case early on and plays an active role in the management of the case up to and including the trial, requires more judges to be appointed and more courtrooms to be opened. However savings should result from fewer and shorter trials.

The Advisory Panel understands that the prosecution service will implement a new model for managing major cases in 2012. These high-profile and complex cases are dealt with below, and the new model is designed to maximize efficiency for such cases.

It is recommended that, in any complex case, a specific Crown prosecutor should be assigned conduct of the case at the earliest possible time.

It is recommended that

(a) the *Fair and Efficient Criminal Trials Act*, S.C. 2011 be used more frequently and that a judge be assigned to a specific criminal case early and play an active role in case management and be the trial judge; and

(b) where necessary and as soon as possible before trial, the Crown should give the assigned judge a summary of the case that the Crown intends to adduce at trial.

2.4) Crown File Ownership

Crown file ownership aims to reduce the number of Crown Counsel handling any particular file. The goal is to have a Crown lawyer assigned as early as possible in the process and to maintain continuity of the file until it is resolved. Crown file ownership promotes early disclosure and decision-making and facilitates early meaningful plea discussions between counsel. Crown file ownership would contribute to realistic time estimates for trial as the Crown setting the date would be responsible for the conduct of the trial. Crown file ownership provides for the efficient and effective processing of cases.

As the IAAS Report noted, the Ministry of Attorney General (now Ministry of Justice) is responsible for providing the prosecutors to conduct the cases set for trial. However, as the report highlights, the scheduling is done independently through the judiciary and the Ministry has "no decision making authority" over court scheduling.[23]

Effective and efficient scheduling may benefit from the Courts seeking input from Crown counsel and the Bar who are most affected by scheduling, for example taking into account the ability of the CJB to provide Crown Counsel for courtrooms that are scheduled and to take into account individual Crown Counsel schedules

[23] IAAS Report, at page 14.

It is recommended that scheduling remain in the purview of the Courts to respect the independence of the courts, however within that independence it is recommended that the re be consultation with the primary actors – notably Crown and the Defence Bar.

2.5) Court Scheduling

Wherever possible, efficiencies must be found within the justice system. To this end, CBABC works closely with the judiciary on various Bench-Bar committees and groups, and also provides significant feedback through its Court Services Committee on issues encountered within the system.

The Provincial Court has advised that it has been developing a replacement scheduling system since early 2011, and this initiative is at the stage where the Court will begin consulting with the CBABC on this new system.

The first glimpse of the system reflects a significant change in the approach taken by the court in scheduling matters. Historically, the court has tried to eliminate uncertainty in scheduling by creating systems, such as the criminal case flow management system (CCFM), to eliminate uncertainty and create more predictability in scheduling.

However, that approach has not worked. The CCFM has created a number of prescribed steps that all cases must follow, and that has created internal inefficiencies. Also, cases deal not with types but with individual people, which makes uncertainty the one common denominator in every case – whether it is criminal, family or civil.

The Court has indicated that its new system will be designed to accept uncertainty and be more flexible. It will allow the distribution of resources more readily when cases settle or fold, as examples. This system has been described as a version of the system that is presently being used in Alberta.

It is recommended that work continue on developing and refining the emerging Provincial Court scheduling system taking into account the diverse scheduling needs of each region

2.6) Crown Approval of Charges

In its 2011 submission, *Justice Denied – The Causes of BC's Criminal Justice System in Crisis*, the BC Civil Liberties Association made a number of observations and recommendations that the Advisory Panel supports. One important recommendation is the continuation of pre-charge assessment by Crown Counsel.

Under the *Crown Counsel Act*[24] the Criminal Justice Branch has the responsibility to approve and conduct all prosecutions in British Columbia. Each Crown Counsel is authorized to examine all relevant information and documents, and following the examination, to approve for prosecution any offence or offences that he or she considers appropriate (section 4(3) (a)). The Branch's charge assessment policy requires a Crown Counsel to consider both the sufficiency of the evidence and the public interest to determine whether the charges proposed by the investigative agency should be approved. Normally there is a two-part test: (i) whether there is a substantial likelihood of conviction and, if so, (ii) whether a prosecution is required in the public interest.

The Crown Counsel conducting charge assessments are legally trained and experienced in assessing evidence. They can assess what evidence is likely admissible, what weight will likely be given to that evidence, whether that evidence is overborne by viable defences, and whether insurmountable *Charter* issues are present. All this needs to be considered at the charge assessment stage. Police investigators do not have this experience or expertise.

Crown Counsel's assessment of a Report to Crown Counsel submitted by the police is conducted before charges are laid and before a person has been compelled to

[24] *Crown Counsel Act*, R.S.B.C. 1996, c. 87.

appear in court. In appropriate cases, the report is returned to the investigative agency for more information before a charge assessment can be made.

Crown Counsel are in the best position to know what charges are appropriate (if any) and to properly draft the charges on the Information. Crown Counsel are trained not to "over charge". The information presented by the police require review by Crown Counsel, who are more likely to require corrected information or simply stay the charges.

The February 20, 2012 Criminal Justice Branch media report on the charge approval process set out the following:

- In fiscal year 2010/11, the Criminal Justice Branch received 74,920 Reports to Crown Counsel that recommended charges. Some of those reports recommended charges against multiple accused.
- In 2010/2011, the Branch made charge approval assessment decisions in relation to 79,668 persons.
- Charges were approved against 65,984 persons.
- At the time of the Branch's 2010/2011 Annual Report, the reports for 2,257 accused persons remained with the police or other investigative agencies with a request for more information.
- A decision to not approve a charge was made by the Branch in relation to 9,421 persons.[25]

Based on the Criminal Justice Branch own statistics, British Columbia would have approximately 9,421 additional cases in the criminal justice system if it were not for the Crown's charge assessment process. Clearly those additional charges would require additional resources and would exacerbate the delays already present in the criminal justice system.

The Green Paper proposes a review pre-charge screening, but eliminating this essential step would not, in the end result, be a cost-saving measure.

[25] Criminal Justice Branch, *Media Statement: Charge Approval Process*, February 20, 2012.

If a charge that has been approved is ultimately stayed, the person charged may suffer anxiety, loss of reputation and other needless consequences. No dollar value can be attached to the repercussions endured by a wrongly charged individual. Therefore it is extremely important to those facing potential charges to have the Reports to Crown Counsel carefully screened before charges are laid.

The Green Paper contends that the existing charge approval process adds costs to the system. This conclusion is misguided. Suggesting that the police be given the authority to lay charges without the review or approval of Crown Counsel would result in more charges being laid that do not have a substantial likelihood of conviction or would not be in the public interest. This would result in even more cases being put into the system and further compounding existing delays.

The Advisory Panel agrees with the conclusion of the BCCLA that the Crown charge assessment and approval process is working and should not be replaced with a system that would allow charges to be laid directly by the police.

It is recommended that current pre-charge screening and assessment by Crown Counsel be continued.

2.7) Use of Alternative Measures

The Advisory Panel understands that in 2010 the prosecution service revised its alternative measures policy to emphasize the principle that alternative measures should be considered for any case where the successful completion of an alternative measures program can achieve the most important objectives of a court prosecution. Later in that year, in partnership with the Corrections Branch of the Ministry of Public Safety and Solicitor General, they launched pilot projects where corrections staff provided risk assessments for Crown Counsel of candidates for alternative measures. Using alternative measures promotes the principles of justice and it is also an efficient use of resources. The Advisory Panel understands that more pilots may be launched in 2011/12.

A common alternative measure - restorative justice (RJ) - is an approach to criminal convictions that focuses on healing relationships and repairing the damage that crime causes to individuals and their communities. There is a growing interest in RJ across Canada as an alternative to traditional incarceration.

RJ can be used at specific points within the criminal justice system, particularly for breaches. But there needs to be more resources for drug and alcohol treatment, as most of the breaches involve an abstention condition. There also needs to be greater use of discretion for offenders with cognitive disabilities. The release conditions need to be enforceable and appropriate. The courts need to be more hands-on to ensure that cases are moving along and progress is monitored. There needs to be consistency of both judicial responses and Crown responses.

While courts and corrections are exploring options for offenders such as alternative measures, other adjudication systems are emerging that allow for greater flexibility and discretion, such as community courts and other problem-solving courts (see *2.9: Offenders' underlying problems,* below).

It is recommended that there be a renewed focus on development of and resourcing of restorative justice initiatives in consultation with police, Crown, defence and community organizations, and that those projects, including pilot projects, be adequately resourced and properly assessed to track their effectiveness.

2.8) Early Resolution Strategies

Efforts at the front end to resolve matters are worthy, but unless appropriate resources are put into the system to support those efforts, early resolution will not occur. Even in large centres, where there is central charge approval and the charges are laid quickly, in many cases resolution does not take place until the matter is close to trial or on the trial date itself. The experience of the prosecution team in Surrey was cited as a factor in the number of early resolutions.

The success of a front-end resolution team depends on many factors, including reasonableness and predictability. To achieve early resolutions, arraignment Crown must be able to build a consensus amongst the participants. To do so, Crown needs to have the confidence of their colleagues, the judiciary, defence, complainants, and the police.

Senior Crown prosecutors should be assigned to first appearance rooms or disposition courts to filter out cases where an early disposition is deemed likely, or even possible.

It is recommended that early resolution models be adopted and implemented in Crown offices, in consultation with all relevant stakeholders, including Crown, defence Bar, the Bench and police.

2.9) Offenders' Underlying Problems

Problem-solving courts are multi-disciplinary partnerships between the justice system and the community to promote offender accountability, and to address the underlying issues behind an offender's appearance before the court.

In his forward to the report, *Judging in the 21st Century,* Justice Paul Bentley commented:[26]

> *The notion that Judges should apply a problem solving approach to the matters that come before them is not new. Mental health practitioners for example, have long contended that mental illness is a health issue rather than a criminal law matter, and that the criminal justice system is ill equipped to deal with people who are mentally ill. In the 1980's, it was the turn of the addiction community to argue that incarceration alone did not break the cycle of drug use and crime for substance-addicted offenders. More recently, agencies and practitioners who*

[26] Goldberg, S., *Judging for the 21st Century: A Problem-Solving Approach*, National Judicial Institute, Ottawa, Ontario, 2005, at page 1.

confront the daily realities of domestic violence have made the case that focusing only on guilt or innocence does little to stop the cycle of abuse or protect survivors of violence from further assault. Members of Aboriginal communities – over-represented in our courts and in our gaols – have advocated for a justice system that both considers the complex social, economic, and cultural factors that cause Aboriginal people to be in conflict with the law and that takes a healing approach to sentencing.

All of the above-initiatives have resulted in the establishment of courts and courtrooms dedicated to addressing some of the root problems – mental health issues, addiction, limited anger – and risk-management skills, poverty, and social marginalization – behind criminal activity. Judges were often in the forefront of pressing for this paradigm shift, arguing that a new approach was long overdue for dealing with multifaceted social and legal issues they struggled with each day in court. For many judges, the development of a problem-solving approach has permitted them to craft dispositions that reduce the likelihood of parties appearing in court in the future. By considering the issues through a problem-solving lens, judges have been able to devise people-oriented solutions that are acceptable to both litigants and the community.

In 1998, a drug treatment court and a mental health court were opened in Toronto; they were the first problem-solving courts to open in Canada. There are now problem solving courts in various cities across Canada dealing with a variety of issues including but not limited to addictions, mental health, domestic violence and *Gladue* (the unique circumstances of Aboriginal offenders). There are also two community courts that deal with all issues affecting the wellness of the offender.

British Columbia has a Community Court, a Domestic Violence Court, and a Drug Treatment Court in Vancouver, as well as a First Nations Court overseen by

Provincial Court Judge Buller Bennett in New Westminster and a First Nations Court overseen by Judge Challenger in North Vancouver. Victoria has also been working towards establishing a community court.

Ongoing evaluation of problem-solving courts has found them to be more effective than traditional courts at addressing the underlying issues leading to the offence, increasing the level of compliance, and decreasing both the frequency and seriousness of the offences. As a result, these courts may be more expensive to run in the short term, but the savings over the long term to the offender and the related agencies, such as health and social services, more than makes up for the extra costs.

Although most specialized courts have been established in large urban centres with dedicated courtrooms, judges, treatment facilities and social services, the barriers to their placement in a rural environment are not insurmountable.

Establishing problem-solving courts in smaller more remote communities presents its own set of challenges and opportunities. A smaller community will not have the population to sustain a specialized court, such as a drug treatment court, but it may be in a better position to establish a problem solving courts that deal with a wide range of matters, with the appropriate resourcing from the Government. A problem-solving approach to justice and judging proposes applying the tools of behavioural sciences inside Canada's courtrooms if not throughout the entire system, to make the justice system more relevant to and effective for all the parties involved. These courts can address the complex, often overlapping, and sometimes intractable social and personal issues, such as addiction, mental health, poverty and cognitive impairments that underlie human causes of crime and criminal behaviour. Problem-solving courts take a non-adversarial team approach to court processes, one that broadens the focus beyond the straight application of the law to give consideration to its effects on all stakeholders, including the offender, victims, their wider community, and the court itself.

Success in the problem-solving court is measured less by compliance or by the effective clearing of dockets, and more by therapeutic outcomes and the degree to which underlying problems are remediated. In so doing, a problem-solving approach to justice aims to address the "revolving door" system that recycles repeat offenders through the criminal justice system.

It is recommended that BC establish and adequately resource more problem-solving courts so as improve the outcomes following offences in real, tangible ways that deal with underlying causes and not just symptoms, and that the government ensures proper management and evaluation of those projects.

3) The *Charter*

The problem created by the decrease in judicial capacity within BC's Provincial Courts (as discussed in *1.1: Judicial capacity*, above) is exacerbated by the increasing complexity of legal issues that commonly arise in many criminal trials.

In the early years following the enactment of Canada's *Charter of Rights and Freedoms*,[27] thirty years ago, legal arguments based upon the *Charter* were new and novel, and did not consume a great deal of time. Today, *Charter* arguments have become significantly more complicated and take a considerable amount of time to hear and decide.[28] This has resulted in increased length of both trials and pre-trial hearings. Further, these delays are encroaching on the time when judges have been scheduled to start new trials.

The net effect is that criminal trials keep getting backed up against each other, and it becomes very difficult to get continuation dates where all parties are available,

[27] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, *1982* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

[28] For example, a *Charter* argument of unreasonable trial delay can easily take more than a day, and an argument dealing with an alleged unreasonable search, especially where a search warrant is involved, can take many days to argue.

especially where there are multiple accused persons. There are simply not enough judges available to stem the tide of delay.

The Green Paper[29] sets out ten proposals to counter delay. The government's proposals deal with judicial independence, resistance to change, use of business practices, improved scheduling, Crown case management, judicial case management, representation of accused, Small Claims procedures, charge approval and management of lower-risk offenders. None of these proposals address the significant issues of increased court time that is taken up by hearing *Charter* issues and the lack of judges to hear and decide these issues.

The procedural rights that the *Charter* enshrines are inviolate and must be protected. Issues related to alleged violations of *Charter* rights must be heard and decided by the courts. Effective case management is particularly important to avoid *Charter* arguments derailing the case and other cases in the system.

Notice of *Charter* arguments play a role in effective management of *Charter* applications. The *Constitutional Question Act* (CQA) sets notice requirements for applications brought under section 52 of the *Constitution Act* and applications to strike legislation brought under section 24(1) of the *Charter*. Notice must be in writing and must give particulars of the impugned law and/or right alleged to have been violated.

The CQA does not apply to applications brought under section 24(2) of the *Charter* to have evidence excluded, and there is some debate in the case law as to which applications brought under s.24(1) in criminal cases are subject to the CQA. However, it is clear that where CQA notice is not required, the court has the discretion to require the defence to given notice prior to trial and to require that the notice provide particulars of the grounds for the application. [30]

[29] *Green Paper*, at pages 21 to 25.
[30] *R v. Sipes* 2008 BCSC 1257

Regardless of whether CQA notice is required, as much notice with reasonable particulars as possible in the circumstances, assists in effectively managing the case prior to trial. Where notice is not required, case management will be facilitated if the Bench and the Bar develop a set of best practice guidelines.

It is recommended that counsel be required to comply with the *Constitutional Question Act* and give proper advance notice of a *Charter* argument before a hearing or trial, and when so doing
(a) be proactive in their filing requirements, and
(b) give binding estimates of the time required for argument.

It is recommended that a Bench and Bar Committee be struck to develop best practice guidelines on notice and particulars of notice for Charter applications where notice is not mandated by the *Constitutional Question Act*. The goal of the best practices should be to provide notice and particulars as early as possible when feasible.

4) The Rule of Law, Independence of the Judiciary and the Constitution

At its most basic level, the rule of law protects the citizens and residents of the country and shields them from arbitrary government action. An independent judiciary is a key aspect of the rule of law; it is critical to the fulfillment of the rule of law in a complex modern state with many competing interests.

On March 15, 2012, the Chief Justices and Chief Judge of BC released a joint statement on judicial independence.[31] That document is attached as Appendix B to this submission. CBABC adopts the statement in its entirety, and in particular, supports the clarification that independence of the judiciary does not belong to the judiciary and does not protect the judiciary. It belongs to the public. It is the duty of

[31] *Judicial Independence (And What Everyone Should Know About It)*, Court of Appeal of BC, Supreme Court of BC, and Provincial Court of BC, March 15, 2012; source: http://www.courts.gov.bc.ca/about_the_courts/Judicial%20Independence%20Final%20Release.pdf.

the judiciary to exercise independence and it is the obligation of the executive and legislative branches of government to respect the independence of the judicial branch.

The Justice System has to be considered in the context of its role in our society and the governance of our country. In the recent *Vilardell* case, the Court conducted an in-depth analysis of these issues and commented on how the government has reconfigured justice from an arm of government that should be funded appropriately for the public good, to a public service to be provided to the public at cost or better.[32]

Further the Court stated that the evidence received presented a picture that in the last two decades the government has lost its enthusiasm for supporting the courts at a level required to fulfill their purposes. This has led the government to re-imagine the courts in order to justify the imposition of limitations on their use and funding.[33]

The Court held that the government cannot lawfully use its control over funding to impede the judicial branch from fulfilling its mandate to be an accessible forum. Reliance on economic or bureaucratic pressures to explain underfunding the judicial branch of government limits the right of individuals to call it to account and so inhibits a core democratic function. Such an approach ignores the role of justice in our parliamentary democracy system, as enshrined in the *Charter*.[34]

The Court summarized that that our courts are constitutionally a common good and not a "service" that competes for what is left over after the legislature organizes its other priorities. Putting a price on justice or purporting to re-imagine the courts as services undermines the fundamental values of democracy, federalism and the rule of law.[35]

[32] *Vilardell* at paras. 305 to 308.
[33] *Vilardell* at para 407.
[34] *Vilardell* at para 410.
[35] *Vilardell* at para 429.

The Audit Review (mentioned above in the introduction to the first chapter), emphasizes a preferred approach that relies on business models and cost-cutting efficiency to justify justice initiatives. The CBABC rejects this approach because it ignores the central role of the judiciary as a vital branch of government and fails to recognize the inherent value of the justice system within our system of democracy.

The Green Paper and Mr. Cowper's Terms of Reference speak of the necessity of constitutionally appropriate collaboration. Collaboration and cooperation are important to resolve issues that arise. We do not believe a general framework can be developed into which an issue can be inserted and from which a constitutionally appropriate model of collaboration will emerge.

The appropriate limits on constitutional independence depend on the issue at hand and the context in which it arises. In other words, there is no formula for constitutionally appropriate collaboration that is scaleable to all justice reform issues. We do believe that the legislative and elected branches of government, the judiciary, the police, Crown and the private Bar can and should communicate and collaborate on change, while respecting the respective constitutional roles of their fellow players in the criminal justice system.

Instead of trying to define the lines of independence within this submission we make recommendations that are examples of, or refer to, constitutionally appropriate collaboration such as avoiding unilateral reform, having a statutory complement of the Provincial Court judiciary, and striking a Bench and Bar Working Group for best practices of notice and particulars on *Charter* arguments.

It is therefore recommended that reform measures be implemented in consultation with the justice system stakeholders, cognizant and respectful of the principles set out above, and that changes not be imposed unilaterally by one branch of government over the other.

5) Measurement and Evaluations

A major deficiency within the current criminal justice system is that there are very few programs in place that are taking steps to measure and evaluate either specific initiatives or broader facets of the system.

5.1) Data About BC's Criminal Justice System

One example of the problem of a lack of data about either efficacy or efficiency of our criminal justice system is the evaluation of the Downtown Vancouver Community Court.

On September 6, 2008, Premier Gordon Campbell launched Canada's first community court on the downtown eastside of Vancouver, in the former Vancouver pre-trial centre. The Downtown Community Court was created as a pilot project in response to a recommendation of the B.C. Justice Review Task Force and its Street Crime Working Group in their September 2005 report.[36] The British Columbia government embraced the recommendation for a community court and significant time, energy and money was put into the project. Before setting up this court, research was conducted to examine community court models in other countries, particularly the United States.

The focus of the court was to bring together integrated services with the goal of reducing crime in Vancouver by addressing homelessness, addictions and mental illness. The specific objectives of the court were to:

1. Integrate services to address offender needs;
2. Increase offender accountability and reduce recidivism;
3. Instill community confidence in the Downtown Community Court; and
4. Create a more efficient court.

[36] Street Crime Working Group, *Beyond The Revolving Door: A New Response to Chronic Offenders*, report to the Justice Review Task Force, September 29, 2005; source: http://www.bcjusticereview.org/working_groups/street_crime/scwg_report_09_29_05.pdf.

To achieve these goals, the court was established as a partnership of 14 agencies.

The pilot project was to be evaluated over the course of three years with annual reports. The first report was released in August of 2010. This report covered the first twelve months of operation of the court and dealt with the court's implementation and delivery, and the early court process efficiency results.

The second interim evaluation report was planned for the spring of 2011, with the final report sometime in the spring of 2012. The second report was supposed to deal with offender outcome information (excluding recidivism) and court efficiencies achieved. The final evaluation was expected to examine offenders' behaviour and reoffending rates. The thinking was that over the long term the stakeholders could evaluate the investments they had made in the Downtown Community Court.

The Advisory Panel has reviewed the 2010 *Interim Evaluation Report on the Downtown Community Court*,[37] and has concluded that without the subsequent evaluations it is now impossible to know if the court has met or is meeting its goals.

A number of key findings are set out at pages iv-x of the *Interim Report* but overall the available data could not permit conclusions to be drawn regarding the court efficiencies. Nor could they evaluate the rate of recidivism, as that would be a long-term measure of the court's success. It is simply not possible to know if the problem-solving approach to address offenders' needs and circumstances has been effective in breaking the cycle of crime.

A disappointing fact is that no follow-up evaluations have been released despite the acknowledgment in the first report that it was a fundamental component of the project.

Unfortunately, other justice initiatives in the past have suffered from the same lack of evaluation.

[37] Ministry of Attorney General, Justice Services Branch and Minister of Public Safety and Solicitor General, Corrections Branch, *Downtown Community Court in Vancouver: Interim Evaluation Report*, August 30, 2010; source: http://www.criminaljusticereform.gov.bc.ca/en/reports/pdf/interimevaluation.pdf

For example, the Crown Counsel Operational Review Project (completed in 1999) brought in the Team Model to Main Street with the objective of improving the quality and efficiency of Crown case management at 222 Main Street.

It was acknowledged at the beginning of the Team Model project that although there appeared to be significant inefficiencies in processing cases, one had to rely on anecdotal information and perceptions of those who work in the system rather than actual statistical information. It was noted that, if the goal of the project was to be met, procedures for systematically gathering and analyzing quantitative and qualitative data needed to be implemented. That would allow problem areas to be clearly identified so that improvements could be made.

Measurements were not put in place to evaluate the effectiveness of the Team Model. Although initially embraced with great enthusiasm, the team approach with a focus on "file ownership" slowly dissolved to the point where now the model is no longer in place. It would be very difficult at this point to determine precisely why the model was dismantled.

If any new approaches to case management and "file ownership" are proposed as a result of the Green Report, the most important component to the change must be a firm commitment to evaluation. We need to learn some lessons from the way we have approached and implemented change in the past.

It is recommended that improved metrics be developed and implemented to properly measure BC's criminal justice system, taking into account all the factors that are at play and not focusing only on basic statistics such as time, cost, etc.

5.2) Mega Trials

Mega trials (or mega cases) are those that involve several accused or many charges, where the trials usually take weeks if not months to complete. There are an increasing number of cases, mainly drug and gang cases, where multiple defendants

are charged. Often, those charges include conspiracy offences which, by their very nature, are often difficult to prove. Usually, they involve wiretap evidence or extensive surveillance evidence, or both, which can be complex and very time-consuming. The largest outlay of resources in these cases is at the front end in order to prepare them for trial. One case has been in the system for three years and a date has still not been set for trial.

The impact of these cases is felt primarily in the Supreme Court where the trials are held. The decisions are frequently appealed resulting on an increase in demand on the appellate courts. Recent examples are the "Surrey Six" or "Sipes" trials.

The Advisory Panel understands that mega trials consume a lot of resources from the Crown, the courts and legal aid. While legal aid funding for mega trials comes from a separate source, funding these trials can significantly impact the limited global budget for legal aid.

The Advisory Panel understands that, for statistical purposes, mega trials are counted as one case, and are often aggregated for data and statistical purposes with the smaller or more routine criminal cases in the statistics currently kept by the Criminal Justice Branch. For that reason they are not acknowledged in the Green Report. These prosecutions are a priority for British Columbians, as the activities of these gangs are changing the landscape of our province. The court data should reflect this reality. If mega cases were counted differently, perhaps as some multiple of more routine cases, then the total number of criminal law cases in BC would be higher.

It is recommended that the court data collected by the Criminal Justice Branch be modified to reflect the complexity and time-consuming nature of mega cases.

The CBABC understands that the Criminal Justice Branch is reviewing mega trials and has developed a new action plan to deal with these unique cases and the significant resources they demand from the Criminal Justice Branch.

EXTERNAL FACTORS

The Advisory Panel also recognizes that there are several changes that have taken place outside our criminal courts that have had a negative impact on what happens within the criminal justice system.

1) Shortage of Lawyers in Rural and Smaller Centers

There are not enough lawyers setting-up law practices in BC's rural and smaller centres, and it is difficult to recruit lawyers to live and work in these areas of the province. An aging legal profession further contributes to this shortage of lawyers, particularly defence counsel, and that exacerbates scheduling problems.

The CBABC is addressing this problem through its Rural Education and Access to Lawyers (REAL) initiative. The Association is also lobbying to have lawyers included in an existing loan forgiveness program for medical students that would, if adopted, forgive student loans if a lawyer agrees to stay in a rural community for a specified amount of time. When faced with the sometimes staggering challenges of paying-off massive student loans, many young lawyers will simply turn their backs on the quality of life benefits and future opportunities that exist outside our urban centres. Creating a loan-forgiveness plan should provide a meaningful incentive for young lawyers to move to and set-up practices in rural areas of the province, as is occurring for young medical doctors.

It is recommended that the government implement the CBABC student loan initiative and recommendations to forgive the student loans of new lawyers who agree to move to and set-up law practices in rural and smaller centres, and include the year of articling as a year of study for the purposes of the interest relief program.

2) Closure or Failure of Mental Health Facilities

The number of individuals with significant mental health issues coming into contact with the criminal justice system is on the rise. Although statistics may not be available from the criminal justice system, anecdotally Crown Counsel and judges report an increase in the number of individuals with mental health problems coming before the courts.

One case study is the downsizing of Riverview that began in 1992. That process was suspended for a while in 1996, due to pressure on acute psychiatric services in Vancouver and due to the lack of community care resources throughout British Columbia.[38] In 2002, the Riverview Redevelopment Project was announced and since that time patients have been systematically transferred out of Riverview.

Through the Riverview Redevelopment Project, responsibility for caring for individuals with mental illness who need highly specialized treatment and support is being transferred from Riverview Hospital to B.C.'s five geographic health authorities. In 1913 Riverview had 4,306 beds. By 1976 the capacity had fallen to 1,853 beds. As of January 2012, Riverview had 72 patients waiting for transfer or discharge. The hospital is scheduled to close in June of 2012.

The question remains whether there are adequate resources in the community to support those individuals who, in the past, would have been given treatment at

[38] Morrow, M., Pederson, A., Smith, J., Josewski, V., Jamer, B., & Battersby, L. (2010) *Relocating Mental Health Care in British Columbia: Riverview Hospital Redevelopment, Regionalization and Gender in Psychiatric and Social Care*. Vancouver: Centre for the Study of Gender, Social Inequities and Mental Health, at pages 17-18; source: http://www.socialinequities.ca/wordpress/wp-content/uploads/2010/05/Relocating_MHC_BC_web.pdf.

Riverview Hospital, and whether the redevelopment of Riverview has contributed to the increased number of individuals with mental health issues in the criminal justice system. It would appear from the research conducted by the BCCLA that there are inadequate resources in the community to support the closure of Riverview and that it is contributing to the increase of the walking wounded, who are now becoming trapped within the criminal justice system.

Some Panel members report that their own experiences dealing with those suffering from mental health issues accords with the study commissioned by the Vancouver Police department.[39] That study concluded that, because of a lack of adequate mental health facilities and available care options, many police officers have little option but to arrest individuals who may be suffering from mental illnesses and bring them to court. That is an inappropriate and relatively expensive way to deal with mentally ill individuals. However, with no hospital beds or other community services available, it may be the only option at the time.

In the experience of members of the Advisory Panel, all of the concerns raised by the BCCLA report concerning the unique problems posed for the courts by such cases are correct. The Downtown Community Court is attempting to provide more resources for such individuals, but the problems still remain.

What is clear is that there are still too many individuals being brought before the courts with mental health issues. It is fair to conclude (as the BCCLA has) that appropriate mental health treatment is not available at the level required to keep those with mental health issues out of the criminal justice system.

It is recommended that the government move forward and implement the BCCLA recommendation that investment should be made in community mental health and crisis intervention programs to offer alternatives to criminal justice for those in crisis.

[39] *Justice Denied*, at page 17.

It is further recommended that

(a) more tertiary adult acute care facilities be built to deal with those individuals with serious, complex and persistent mental illness who need intensive long-term treatment and support; and

(b) more tertiary adult rehabilitation facilities be made available.

SUMMARY OF RECOMMENDATIONS

The CBABC recommends that:

1. the Provincial Court should have a fixed complement of full-time judges, and the Judicial Council should review that complement every 2-3 years, with a recommendation for the go forward complement.

2. the government immediately increase legal aid funding so as to allow the Legal Services Society to provide sufficient legal aid services to the public.

3. regional legal aid centres be established to serve as the point-of-entry hub for core legal aid service; mobile outreach services be provided to those who cannot access the regional centres due to geographic, cultural or other barriers; the team approach to the delivery of legal aid services be enhanced, with greater emphasis on the role of suitably trained and supervised community advocates and legal advocates; where warranted, the rule of duty counsel and staff lawyers be expanded; there be greater integration of legal aid services with other support services available at the centres to meet client needs in a more holistic manner.

4. videoconferencing facilities be set up in local RCMP stations or other appropriate locations within rural communities.

5. the number of Crown Prosecutors needs to be increased to match the capacity (as opposed to simply the numbers) required to reduce the current backlog and restore public confidence; once that backlog has been removed, staffing levels be set in consultation with the Crown Counsel Association to ensure that appropriate service levels are being maintained; hiring budgets reflect the need to attract and replace senior Crown with lawyers who have experience beyond the entry level; the policy that there be 2 Crown Prosecutors and 2 staff for each Provincial Court Judge, be adhered to.

6. the Doust Report recommendation #6 be implemented, which calls for increased provincial and federal government funding through a stable multi-year granting process.

7. the overall or average caseload per probation officer be reduced; the inmate-to-corrections officer ratio be reduced; funding for inmate corrections programs be increased.

8. the provincial government establish a provincial disclosure committee with the mandate to (i) review disclosure procedures , and (ii) issue new directives and guidelines on the scope of disclosure and its content; this disclosure committee be comprised of representatives of the police, the criminal bar (both defense and Crown), legal aid, courts administration and the judiciary.

9. the government initiate widespread consultation with all users and providers to determine appropriate, affordable standardized technology that can then be made widely available to expedite disclosure and handling of evidence and data – both in the pre-hearing phase and during hearings.

10. in any complex case, a specific Crown prosecutor should be assigned conduct of the case at the earliest possible time.

11. the Fair and Efficient Criminal Trials Act, S.C. 2011 be used more frequently and that a judge be assigned to a specific criminal case early and play an active role in case management and be the trial judge; and where necessary and as soon as possible before trial, the Crown should give the assigned judge a summary of the case that the Crown intends to adduce at trial.

12. scheduling remain in the purview of the Courts to respect the independence of the courts, however within that independence it is recommended that there be consultation with the primary actors – notably Crown and the Defense Bar.

13. work continue on developing and refining the emerging Provincial Court scheduling system taking into account the diverse scheduling needs of each region.

14. current pre-charge screening and assessment by Crown Counsel be continued.

15. there be a renewed focus on development of and resourcing of restorative justice initiatives in consultation with police, Crown, defence and community organizations, and that those projects, including pilot projects, be adequately resourced and properly assessed to track their effectiveness.

16. early resolution models be adopted and implemented in Crown offices, in consultation with all relevant stakeholders, including Crown, defence Bar, the Bench and police.

17. BC establish and adequately resource more problem-solving courts so as improve the outcomes following offences in real, tangible ways that deal with underlying causes and not just symptoms, and that the government ensures proper management and evaluation of those projects.

18. counsel be required to comply with the Constitutional Question Act and give proper advance notice of a Charter argument before a hearing or trial, and when so doing, be proactive in their filing requirements, and give binding estimates of the time required for argument.

19. a Bench and Bar Committee be struck to develop best practice guidelines on notice and particulars of notice for Charter applications where notice is not mandated by the Constitutional Question Act. The goal of the best practices should be to provide notice and particulars as early as possible when feasible.
20. reform measures be implemented in consultation with the justice system stakeholders, cognizant and respectful of the principles set out above, and that changes not be imposed unilaterally by one branch of government over the other.

21. improved metrics be developed and implemented to properly measure BC's criminal justice system, taking into account all the factors that are at play and not focusing only on basic statistics such as time, cost, etc.

22. the court data collected by the Criminal Justice Branch be modified to reflect the complexity and time-consuming nature of mega cases.

23. the government implement the CBABC student loan initiative and recommendations to forgive the student loans of new lawyers who agree to move to and set-up law practices in rural and smaller centres, and include the year of articling as a year of study for the purposes of the interest relief program.

24. that the government move forward and implement the BCCLA recommendation that investment should be made in community mental health and crisis intervention programs to offer alternatives to criminal justice for those in crisis.

25. more tertiary adult acute care facilities be built to deal with those individuals with serious, complex and persistent mental illness who need intensive long-term treatment and support; and more tertiary adult rehabilitation facilities be made available.

APPENDIX A

JUSTICE SYSTEM REFORM BRIEFING NOTE

Sharon D. Matthews, President, CBABC

November 23, 2011

INTRODUCTION

The CBABC is engaged in a public awareness campaign about the importance of legal aid and the necessity for adequate and stable funding, see: www.weneedlegalaid.com. As part of this initiative, it is important that taxpayers have confidence that the justice system is a good investment for their scarce tax dollars.

Justice system stakeholders are continually seeking ways to make the justice system more effective and affordable. This briefing note outlines some of the initiatives put in place over the last 10 years to improve the effectiveness of the justice system.

THE CHALLENGE

In January 2002 the government announced cuts to the legal aid system which saw government funding reduced from $85 million to $55 million over three years.[i] At the same time, the government closed courthouses across the province and since 2005, the number of provincial court judges available to deal with an overloaded justice system has dropped by 16. Until recently, there was a virtual hiring freeze on Crown Counsel. Staffing levels in the courts have been reduced to levels which hamper the efficient and effective operations of the courts. In summary, both the BC Supreme Court and the BC Provincial Court are being starved of resources. The results are predictable: the system is threatened if not in peril.[ii]

A startling comparison comes out of the provincial government budget. For the current fiscal year (2011/2012), the *increase* to health care spending was almost as much as the combined total budgets for the Solicitor General and Attorney General ministries - $918 million increase to health versus $1,078 million total budgets for the Solicitor General and Attorney General (the budgets of which were decreased by a combined $56 million for this year compared to last year). [iii]

There is no argument that health care is important to British Columbians and should be spending priority. The additional funds necessary to properly resource the justice system are a drop in the bucket compared the to the health care system but the relative importance of the two systems is similar. While health care is essential to our physical well-being, the justice system is the foundation of our democracy and is essential to societal well-being and that of the individuals who comprise it. Chief Justice Bauman recently called upon lawyers to speak out on these issues[iv]:

> Lawyers must educate and urge the community to recognize that courts are not just another line item in the budget - like education or hospitals.
>
> That may sound sacrilegious - more important than education and health care? Yes - from this perspective while education and health care are essential public services, the judicial system, as a branch of government, is a foundational institution in our democracy.

> The legislative branch no matter the constraints of budgets can never close. Its committees must have the resources to carry out their work come "hell or high water". The same is true for the judiciary - the third branch of government.

Since 2002, justice system players have worked hard and innovatively to fill in the gaps left, to improve access to justice generally, and to make the justice system work as efficiently as possible with the scarce public resources put into it.

Over these 10 years it is clear that despite vastly increased pro bono services by lawyers and many other effective initiatives, the remaining gap continues to cause hardship and is economically unwise.[v] Adequate and stable public funding is the answer.

Should you require your tax dollars to be allocated to justice? This briefing note will demonstrate that the answer is yes.

THE LEGAL PROFESSION STEPS UP

Law Foundation

Many British Columbians do not know that interest on lawyers' trust accounts goes directly to funding access to justice initiatives. The money is received and distributed by the Law Foundation of BC[vi] whose mandate is to fund projects and programs throughout BC that benefit the public in the following areas: legal education, legal research, legal aid, law reform, and law libraries. In 2010 the Law Foundation grants totalled more than $17 million. When legal aid was cut in 2002, the Law Foundation stepped in to help fill the gap in services by providing increased funding to community legal advocates.

While the projects funded by the Law Foundation are far too many to list here, we will highlight one that has been jointly funded with the Canadian Bar Association and the Law Society of BC. The Rural Education and Access to Lawyers (REAL) program is tackling the crisis in access to legal services in rural areas and small communities through funding student placements, financial and promotional support to assist with the marketing of regions to law students and new lawyers; and professional support for students who are interested in practicing in rural and small law firms and practitioners with the recruitment, hiring and retention of students and new lawyers in rural and small communities.[vii]

For more information on the Law Foundation funded projects see its latest annual report at: http://www.lawfoundationbc.org/wp-content/uploads/2011/07/LF_2010Annual_Report.pdf

Collaborative Family Law & Mediation

Lawyers have been instrumental in the shift away from the adversarial approach to resolving family problems. Family lawyers in BC have both led and become part of the international growth of

collaborative family law and, as noted above, many lawyers have integrated mediation into their practices.[viii]

Free Legal Services

Lawyers in BC support access to justice by providing thousands of hours of free legal services. In 2010, 5414 lawyers reported doing pro bono work and the average of those reporting was 47.47 hours[ix] where the definition of pro bono is legal advice or services without expectation of a fee for a low income individual or a not for profit organization. This is the equivalent of one week and one day of free work by over 5000 lawyers in one year.

Access ProBono is a non-profit organization funded by the Law Foundation that supports and facilitates the delivery of *probono* (free) legal services across the province. Their programs include:

- Summary Legal Advice Clinics throughout the province;
- Civil Chambers Duty Counsel Program providing legal assistance and representation services to low- and modest-income individuals engaged in civil chambers in the Supreme Court and the Court of Appeal in Vancouver;
- Roster Program -providing pro bono representation services for particular case types to qualifying individuals and non-profit organizations.
- Children's Lawyer Program in Nanaimo Provincial Court providing a "voice to children" in court hearings in high conflict cases; and
- Paralegal Program in partnership the Vancouver Justice Access Centre and the Law Courts Centre providing support from paralegals supervised by volunteer lawyers for self-represented litigants who need assistance in preparing court documents.

Extensive free legal services are also offered throughout the province by the Salvation Army's Pro Bono Program[x] Law Students staff free legal clinics at both the University of Victoria[xi] and UBC[xii] faculties of law.

Law Society of British Columbia

The Law Society of British Columbia is responsible for regulating the legal profession in the public interest by setting and enforcing standards for professional legal conduct. Included in its mandate is to "uphold and protect the public interest in the administration of justice by preserving and protecting the rights and freedoms of all persons."[xiii] In fulfilling this mandate the Law Society is committed to finding ways to help lawyers make their services more accessible. It has undertaken a number of initiatives aimed at doing that.

For example, it has supported the delivery of pro bono services by changing conflict and insurance rules so lawyers have fewer barriers to delivering free legal services. It was also the first Canadian law society to tackle the issue of "unbundling".[xiv] Traditionally, clients hire a lawyer to represent them from start to finish in the resolution of their case. The unbundling of legal services involves lawyers representing clients for only specified steps or tasks. This more flexible approach directly responds to the need for lower cost services.

In its efforts to bring down the cost of legal services the Law Society has supported the delivery of some services by lower cost legal professionals by allowing a great scope of practice for both articled students and paralegals.[xv] Liberalizing the rules about how lawyers can market and advertise their services is intended to lower the cost of legal services by increasing competition.

The Law Society has supported the collaborative approach in family law by certifying family mediators[xvi] and creating family law best practice guidelines.[xvii]

JUSTICE SYSTEM REFORM

Dealing with Civil Cases

Simplifying Justice Processes

The Ministry of Attorney General, the judiciary, the bar and other non-governmental justice partners have been involved in many initiatives intended to simplify civil justice processes and make them more accessible and affordable. For example, Small Claims Court reform has included:

- a rise in the Small Claims jurisdiction to $25,000[xviii] making its simpler and cheaper processes available to more people;
- free mandatory and voluntary mediation;[xix] and
- a pilot that matches disputes to different kinds of processes to speed up resolution of cases and keep costs low for litigants.[xx]

Other initiatives aimed at simplifying justice processes include:

- simplifying court forms;[xxi]
- the Fast Track Litigation processes in Supreme Court;[xxii]
- new Supreme Court Rules aimed a reducing the cost and complexity of litigation;[xxiii]
- new processes under the *Small Estates Administration* (*WESA*) for the faster and easier administration of small estates;[xxiv] and
- out of court processes for bylaw enforcement.[xxv]

Supporting a Range of Dispute Resolution Options in Civil Cases

Starting with its Alternative Dispute Resolution Policy in 1996,[xxvi] the Ministry of Attorney General introduced initiatives aimed at supporting a range of options for resolving disputes outside the courts. It has been a major funder of the Court Mediation Program and the BC Mediator Roster Society (now Mediate BC).[xxvii] It also introduced the Notice to Mediate,[xxviii] which allows one party to a dispute to compel the other party to attend a mediation session. Lawyers see mediation as an important tool in their role as problem solvers for their clients and thousands of lawyers have taken mediation training, so long as resolution by mediation remains voluntary and so long as the processes are backstopped by an independent and adequately resources rights based justice system.

Indeed, this latter point is essential. In order for alternative dispute resolutions systems to be effective, parties must know that if the resolution available through negotiation is not acceptable to them, there is an independent impartial decision maker who stands ready to make a decision. Otherwise, litigants will not engage in out of court settlements. Independence of the judiciary is therefore critical to having all of these other solutions work. The courts must be properly resourced to fulfill this role.[xxix]

Providing Integrated Justice Services & Legal Information

One of the key recommendations of both Civil Justice and Family Justice Reform Working Groups [xxx] was to establish a single place where people with legal problems could find all types of help. Justice Access Centres (JACs)[xxxi] have now been established in Vancouver and Nanaimo to provide a range of services to help people solve their legal problems quickly and effectively. Justice Access Centres provide:

- a central source of legal information;
- coordination and promotion of legal-related services;
- a multidisciplinary assessment/triage service to diagnose the problem and provide referrals to appropriate services; and
- access to legal advice and representation, if needed.

Justice system partners have also created a range of public legal information websites, including the Legal Services' Society Family Justice Website,[xxxii] the BC government's JusticeBC website[xxxiii] providing legal information about the criminal justice system, and a variety of civil resources available on the website of the Justice Education Society. A large group of Public Legal Education providers have also worked together to create Clicklaw,[xxxv] offering a single, trustworthy point of entry to quality online legal information in BC.

A New Approach to Family Justice

Perhaps the biggest changes in the justice system have been to the family justice system. There has been an increasing recognition that the traditional adversarial system "was not designed for family law cases and, for too many families, it does not work well."[xxxvi] While much is left to be done, many initiatives over the past ten years have been aimed at decreasing the negative impacts of divorce and separation on families and society.

The most recent is the introduction of comprehensive new family legislation which modernizes family from the conceptual to the concrete and all ways in between. The proposed legislation:[xxxvii]

- makes express that the best interests of the child must be the only consideration in making decisions involving the child;
- moves away from the divisive "custody and access" norms for post-separation arrangements for the children towards parental responsibility norms where the starting

point is to assume that both parents should be equally involved in raising and decision making for children of the marriage;

- supports ways for parents to resolve family matters outside of the courtroom, where appropriate, through agreements, mediation, parenting co-ordination and arbitration.
- addresses family violence – a new protection order will help the courts more effectively deal with family violence situations;
- enhances co-parenting by creating a range of remedies and tools for non-compliance that will ensure parents receive – and follow through on – parenting time they are given.
- clarifies how property is divided to improve fairness when couples breakup after being in a marriage-like relationship for more than two years;

In addition, over the last several years, the law, legal processes and justice services have come together to simplify making and enforcing child support orders and agreements. These measures have increased the predictability of outcomes and reduced the burden of litigation on families. They include the federal Child Support Guidelines,[xxxviii] the Comprehensive Child Support Service,[xxxix] the Administrative Recalculation of Child Support Orders,[xl] and the Family Maintenance Enforcement Program.[xli]

Justice Access Centres have brought together a range of services to help families going through divorce and separation and mandatory Parenting After Separation[xlii] programs address the emotional and legal aspects of a separation, educate parents about the advantages of alternatives to the courts and help them reduce conflict.

Other family justice initiatives include:

- new Supreme Court Family Rules[xliii] tailored to family cases;
- Notice to Mediate (Family) Pilot Project;[xliv]
- Provincial Court Rule 5 triage process;[xlv]
- Hear the Child Project;[xlvi]
- mandatory judicial case conferences in Supreme Court;[xlvii]
- Distance Mediation Project[xlviii], helping parties who are not able, or do not want to, meet in person conduct mediations in separate locations using technology.

Finally, great changes have been taking place in child protection where mediation and other collaborative practices, aimed at reducing conflict and the time children spend in care, are growing rapidly.[xlix]

Responding to Criminal Justice Challenges

Innovative reforms in criminal justice respond to the growing cost and complexity of criminal cases and the need to address the underlying causes of crime.

Vancouver's Downtown Community Court[l], the first of its kind in Canada, brings together a range of integrated services and agencies to help address the underlying social and health issues that have lead to criminal behaviour. Prolific Offender Management Project,[li] being piloted in six BC communities, is designed to reduce the amount of crime committed by a small number of prolific offenders by bringing together resources from the law enforcement, social services, housing and health sectors to address the issues fuelling the criminal activity.

Restorative justice programs[lii] repair the harm caused by crime by addressing victims' needs, holding offenders accountable for their actions, and engaging the community in the justice process, have been widely adopted in BC. And alternative measures programs use proportionate responses to certain low-risk criminal behaviour.[liii]

BC is working with other provinces, territories and the federal government to improve efficiencies in the criminal justice system. An example of this work includes changes to legislation, such as the *Fair and Efficient Criminal Trials Act*.[liv] The *Act*, which is now in force, contains new measures aimed at:

- strengthening case management;
- reducing duplication of processes; and
- improving criminal procedure.

Bill C-10, the federal omnibus criminal law reform is, unfortunately, a step backwards which will worsen the pressures on the justice system. As stated by Trinda Ernst, President of the Canadian Bar Association:[lv]

> Bill C-10 is titled *The Safe Streets and Communities Act* – an ironic name, considering that Canada already has some of the safest streets and communities in the world and a declining crime rate. This bill will do nothing to improve that state of affairs, but, through its overreach and overreaction to imaginary problems, Bill C-10 could easily make it worse. It could eventually create the very problems it's supposed to solve.
>
> Bill C-10 will require new prisons; mandate incarceration for minor, non-violent offences; justify poor treatment of inmates and make their reintegration into society more difficult. Texas and California, among other jurisdictions, have already started down this road before changing course, realizing it cost too much and made their justice system worse. Canada is poised to repeat their mistake

Improving Court Processes Using Technology

BC is a leader in the use of justice system technology, from electronic access to court files and court lists, the ability to electronically file court documents (collectively known as Court Services Online,[lvi]) to the use of technology in the courtroom to increase hearing efficiency and overcome the challenges posed by delivering justice across a large and dispersed population. The province's eCourt project:

> will ultimately result in the implementation of a fully electronic court file which allows court file information to be processed from anywhere in the province. Citizens will be able to file an online application to the courts or check the status of their file at any time… The eCourt project will enable citizens to choose the means by which they interact with the court, whether in-person, by mail, telephone or the Internet.[lvii]

Finally, in order to cut down the costs of travelling to court and time away from work or child care responsibilities for litigants, Court rules allow parties to apply to attend hearings by telephone or videoconference.[lviii]

CONCLUSION

Since at least the 2002 cuts to justice system infrastructure and legal aid, every possible mechanism has been tested and, where effective, implemented, to do more with less in the justice system. The fact is that a system which is designed to be and is capable of being the best justice system in the world is failing under the pressure of under-funding. After the last 10 years, we know that pro bono efforts, doing more with less and reform can only go so far. Adequate and stable funding is the next critical step.

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APPENDIX B

Court of Appeal of British Columbia

Supreme Court of British Columbia

Provincial Court of British Columbia

Judicial Independence
(And What Everyone Should Know About It)

15 March 2012

Introduction

The provincial government's "Justice Reform Initiative" presents an opportunity to provide information to the public about the courts and the role of the judiciary in our system of government.

Our system of government is divided into three branches: the legislative, the executive and the judiciary. Each has separate and independent areas of power and responsibility. In its simplest form, the legislative branch creates the law, the executive branch enforces the law, and the judicial branch interprets and applies the law in individual cases.

Through a long history, a balance has been struck among these three branches of government, keeping each branch from gaining too much power or having too much influence over the others.

Every resident of Canada remains subject to the application of the law. No person nor government is beyond its reach. This principle is often called the "rule of law" and is important in a democratic system of government. A former Secretary General of the United Nations has defined the rule of law as follows:

> *It refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards*.[1]

This principle has a long history, but the independence of the judges, who are tasked with interpreting and applying the law in individual cases, is an important part.

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[1] U.N. Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General.* (S/2004/616). 23 August 2004. Online: http://www.unrol.org/files/2004%20report.pdf.

What is Judicial Independence and Why is it Important?

The term "judicial independence" is often talked about when discussing the justice system, but is not always well-understood. The purpose of these comments is to help the public understand what judicial independence is and why it is important.

A famous English judge said that "Justice must be rooted in confidence." He was referring to the confidence litigants and the public must have that judicial decision-makers are impartial. Those who come before the courts must be certain that decisions made by those courts are not subject to outside influence. Judicial independence means that judges are not subject to pressure and influence, and are free to make impartial decisions based solely on fact and law. Judicial independence is often misunderstood as something that is for the benefit of the judge. It is not. It is the public's guarantee that a judge will be impartial. The principle has been expressed this way:

> *In the final analysis we value and stress judicial independence for what it assures to the public, not for what it grants to judges themselves. Ultimately, the sole purpose of the concept is to ensure that every citizen who comes before the court will have [their] case heard by a judge who is free of governmental or private pressures that may impinge upon the ability of that judge to render a fair and unbiased decision in accordance with the law.*[2]

It has been suggested that judges may use independence as a "shield" against scrutiny. This is a mistaken view.

Judges have a responsibility to protect their independence and impartiality. They do so not out of self-interest, but as an obligation they owe to the public who have entrusted them with decision-making power, and to whom they are ultimately accountable to maintain the public's confidence. One judge expressed it this way:

> *It is the judge [...] who is primarily responsible for the maintenance of [their] independence and the independence of the judiciary generally. The Chief Judge and others with administrative duties must act as a buffer between the executive and individual judges. All judges, especially those with administrative duties, must be vigilant to preserve their independence and the independence of their court. They must keep the Ministry, just as they must keep all others, at arm's length.*[3]

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[2] Garry D. Watson, "The Judge and Court Administration" in *The Canadian Judiciary* (Toronto: Osgoode, 1976) at 183 quoted in British Columbia, Commission of Inquiry Pursuant to Order-in-Council #1885, July 5, 1979, *Report of the Honourable Mr. Justice P.D. Seaton, Commissioner* (October 23, 1979) at 11 ["*Seaton Report*"].

[3] *Seaton Report* at 60.

To preserve judicial independence, the *Constitution* of Canada requires three things:

1. **Security of tenure:** Once appointed, a judge is entitled to serve on the bench until the age of retirement, unless, for Superior Court judges, both houses of Parliament agree that he or she should be removed from office, or for Provincial Court judges, a tribunal established under the *Provincial Court Act* has ordered that he or she should be removed from office.

2. **Financial security:** Judges are paid sufficiently and in a manner so they are not dependent on or subject to pressure from other institutions.

3. **Administrative independence:** Courts must be able to decide how to manage the litigation process and the cases judges will hear.

It is easy to see how the first two aspects are important to ensure judges are free from government or private pressures affecting their impartiality. The third aspect, administrative independence, is more complex.

The court as a whole must remain separate from other branches of government to prevent any suggestion of improper influence. The Supreme Court of Canada has stated the aspects of administrative independence necessary to maintain a constitutionally-sound separation between the judiciary and other branches of government. They include:

1. the assignment of judges to hear particular cases;

2. the scheduling of court sittings;

3. the control of court lists for cases to be heard;

4. the allocation of courtrooms; and

5. the direction of registry and court staff in carrying out these functions.

It is important to understand why these functions must remain within judicial control. First, the public could not have confidence in the independence and impartiality of the courts if others, outside the judicial branch, could control or manipulate proceedings by interfering in any of these functions. A judge cannot be independent if the necessary support staff is unavailable, or is subject to the control of and accountable to others.

All recognize there is a requirement for accountability for the allocation and disposition of the resources, human and otherwise, necessary to the proper functioning of the courts. There is bound to be continuing tension between the uncertain and varying demands for the resources, and the constraints on those who must budget for the supply of those resources. But if there is a business case to be made for cost savings, that case must be made within the confines of what is permitted by the *Constitution*.

Reforms also need to be examined in context. For example, it has been suggested that "overbooking" (the setting of more than one case before the same judge on the same day) is inefficient and costly, because one or more counsel and parties who attend on the appointed day will have their cases adjourned. That can be one result of overbooking. But this view overlooks the fact that overbooking often leads to more effective utilization of judicial and other court resources, taking into account the number of cases that normally settle on the eve of trial or do not proceed for other reasons.

By long history, our court proceedings are based on an adversarial system. The parties present their opposing positions, witnesses are called and cross-examined. The judge sits as a neutral decision-maker. It is not a perfect system, and it continues to evolve, but in its essential form, and particularly in the area of criminal law, it is a system that has worked well for centuries.

In the adversarial system, the preparation and presentation of cases is left primarily in the hands of the lawyers representing the adverse parties. The courts exercise some measure of control over this, but they must respect the accused's constitutional rights, as well as the professional obligations of the lawyers to their respective clients.

The adversarial system is one feature of the legal system that makes it an uneasy fit with the application of business analysis and systems management designed for a business or government enterprise. The judiciary of each Court has drawn upon such analysis to develop projects and systems to better serve the public in a manner that also recognizes the constitutional structures and rights that underpin the legal system.

There are many other factors which require consideration when seeking to improve the justice system. No one can predict with confidence the number of cases coming into the system at any given time, and no one can predict their complexity or the time they will require to be heard and resolved. Predetermined limits on human resources by those outside the judicial system are likely to give rise to serious problems. Flexibility is necessary if changing demands for judicial and court resources are to be met.

Other Types of Independence

It is important to distinguish between judicial independence and the sort of independence that characterizes the role of other members of our legal system. Police, prosecutors and defence counsel all have to make important decisions in the detection, prosecution and defence of persons alleged to have committed crimes.

There is a critical distinction between the police and Crown prosecutors on the one hand, and the judiciary on the other. The police and prosecutors are in the employ and within the authority of the executive branch of government. Although required to exercise their duties impartially and independently, at the end of the day they are agents of the Crown.

Judges by contrast are not subject to the direction or control of the executive branch of government.

There are sound reasons for this. Government, in its many manifestations, is frequently a party to court proceedings in an adversarial role. For example, the state is behind every criminal prosecution. Government agencies are frequently either parties to court proceedings, or are subject to having their decisions reviewed in the courts. Courts are called upon to decide disputes between our Aboriginal peoples, and various levels of government, or government agencies. Courts also have to rule on the validity of legislation, as to whether it is within the powers given to the Legislature or Parliament by the *Constitution*, and whether it conforms to the requirements of the *Charter of Rights and Freedoms*.

So while police and prosecutors must be independent within their proper spheres, theirs is an independence of a different nature or quality than judicial independence. While police and prosecutors must be objective, they are ultimately part of and answerable to the executive branch of government. Judges are not, and their independence safeguards their impartiality.

Conclusion

The judiciary is always open to discussing ways to improve the administration of justice. Indeed, all levels of court have engaged in extensive discussions with government officials over the past several years with a view to achieving that end. In being open to discussion, however, the judiciary will remain steadfast in protecting the essential elements of judicial independence, as the precursor and guardian of judicial impartiality.

Chief Justice Lance Finch
Chief Justice of British Columbia

Chief Justice Robert Bauman
Chief Justice
Supreme Court of British Columbia

Chief Judge Thomas Crabtree
Chief Judge
Provincial Court of British Columbia