Injecting a Sense of Urgency

A new approach to delivering justice in serious and violent criminal cases.

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Introduction

The judicial stay of sexual assault charges arising from a case in Airdrie this past October has raised concern about the justice system, and, in particular, what should be done to better manage delays that lead to *Askov* applications. As head of the Alberta Crown Prosecution Service, I was asked by the Honourable Jonathan Denis, Minister of Justice and Solicitor General, to review the Airdrie case to examine process delays and determine what steps can be taken to strengthen the current system and prevent any recurrence of the Airdrie situation.

As I have mentioned publicly before, the Airdrie case was a miscarriage of justice. The Criminal Justice System failed the complainant in this case. The system also failed the people of Alberta, who rightly expect that serious criminal charges will be tried on their merits. Responsibility, however, cannot just be assigned to "the system" and left at that. Institutions and individuals who are part of the system are also responsible. As the head of the Crown Prosecution Service, a key justice system participant, I am one of these individuals.

To determine what went wrong in the Airdrie case, I examined information gathered from the police officers and Crown prosecutors involved in the case. I also considered court statistics and business intelligence (BI) information gathered from the Criminal Justice Division and Court Services Division of Justice and Solicitor General. After considering this information, I identified three significant causes of delay in the Airdrie case: (1) incomplete investigation and delayed disclosure[1], (2) unnecessary and repeated adjournments, and (3) systemic acceptance of delay.

As a result of this review, I offer immediate actions and longer term solutions that I believe can prevent this type of miscarriage from repeating itself. These recommendations will be applicable to other circuit courts experiencing similar systemic delay issues. Because responsibility for delay is shared among prosecutors, judges, defence counsel, police, witnesses and complainants, and I represent only one of those justice system participants, the recommendations in this report reference things that can be done by the Crown Prosecution Service unilaterally, things that the Service can influence, and things that the Service can only recommend.

[1] Since 1991 when the Supreme Court of Canada issued its decision in *R. v. Stinchcombe* an accused has a Constitutional right to receive all information that is in the possession of the Crown and that is relevant to the guilt or innocence of the accused on the charge(s) to which (s)he is subject. This is referred to as "disclosure." Disclosure is essential to the accused in making full answer and defence to the charge(s). In meeting its disclosure obligations, the Crown will err on the side of inclusion rather than exclusion. As such, the Crown will disclose all information unless it is clearly irrelevant.

Many of the solutions offered will be difficult and complicated to see to fruition. But there is one commitment I want to make as head of the Alberta Crown Prosecution Service. My goal is to do **whatever it takes** to prevent **any** serious, violent case from being lost because of delay.

Role of the Crown

In order to provide some context to this report, I feel it is important to describe the public function that is served by all Crown prosecutors.

Crown prosecutors are agents of the Attorney General. In Alberta, the Minister of Justice and Solicitor General holds the office of Attorney General. Crown prosecutors, as agents of the Attorney General, have unique duties and responsibilities within the criminal justice system. In *R* v *Proulx*[2], Madam Justice L'Heureux-Dube summarized the function of prosecutors as follows:

> *The Attorney General and the Attorney General's prosecutors are the guardians of the public interest, and assume a general responsibility for the efficient and proper functioning of the criminal justice system. Their role is not limited to that of private counsel who is responsible for an individual case.*

In carrying out their roles, the Attorney General and Crown prosecutors must act independently and cannot be influenced by political or other external influences. This means that prosecutors have discretion in almost all areas where they must make decisions, including whether or not to withdraw or stay a charge, whether to proceed by indictment or summary conviction, whether to launch an appeal, and/or whether to ask for or consent to an adjournment.

Having independence and discretion does not mean that Crown prosecutors are not accountable. Crown prosecutors are accountable to the Attorney General for their decisions. The Attorney General guides how Crown prosecutors do their jobs on individual cases by policies found in the *Crown Prosecutors' Manual*[3]. The *Manual* is available to the public on the Alberta Justice and Solicitor General website. The *Manual* is a series of documents that constitute the Attorney General's instructions to all Crown prosecutors as they make decisions about specific cases. The *Manual* ensures that prosecutions in Alberta are conducted fairly, and with transparency and consistency. Ultimately, decisions of Crown prosecutors must reflect the interest of the community to see that justice is done properly.

The role of Crown prosecutors is not to obtain a conviction in a case. The prosecutor must decide in every case if there is a reasonable likelihood of conviction and whether or not it is in

[2] *R v Proulx* [2000] 1 SCR 61.
[3] Available at: Crown Prosecutors' Policy Manual - Alberta Justice

the public interest to proceed. The standard of "reasonable likelihood of conviction" is higher than the standard the police must meet in order to charge a person with a crime.
If the case proceeds, the prosecutor must put before the Court credible and reliable evidence of the crime they are prosecuting. While the prosecutor can be a strong advocate of their case, they must do so guided by the values of accuracy, fairness and dispassion. It is often said that Crown prosecutors do not win or lose. Their function is greater than that – they must see that justice is done.

Sometimes this means that prosecutors have to make unpopular decisions about a case. Sometimes this means that the police officers and witnesses involved in the case are unhappy with the decision that the prosecutor makes. The case in Airdrie is an example of one of those decisions. However, even if a decision is unpopular, prosecutors must ensure fairness and justice for all Albertans, including the person charged with the crime in question.

As the Alberta Court of Appeal has said, criminal cases must be conducted by "qualified prosecutors who have the training, judgment and courage to make the necessary decisions inherent in every prosecution."[4] The Court went on to say:

> *Abdication of this prosecutorial responsibility to others who are interested in the outcome of a case, but have little or no understanding of the complexities or even the basic tenets of our justice system, is wrong, and represents a serious threat to the fair administration of criminal justice.*

It is not easy for prosecutors to make difficult decisions on cases. They may be criticized by the press and the public for properly carrying out their role. Despite this, prosecutors must make difficult decisions and must remember that they are committed to the values of fairness, transparency, and excellence. Crown prosecutors who do not live up to these expectations do a disservice to all Albertans.

[4] *R* v *Tkachuk*, 2001 ABCA 243

Overview of the Case

At 9:14 a.m. on August 14, 2009, D.P. attended the Airdrie, Alberta RCMP Detachment along with her mother and step-sister. She met with a Constable who took her initial complaint. From there, the three women were interviewed and the contents of their statements were recorded. Less than a month later, the accused was arrested and charged with historical sexual assault offences.

Following D.P.'s initial visit to the RCMP detachment and the accused being charged, there were a number of court adjournments, as additional witness statements were obtained, disclosure was reviewed and participants' schedules were accommodated. The cumulative delay occasioned by these adjournments was so great that defence counsel filed an application for a judicial stay of proceedings. The prosecutor in the case, recognizing the guidelines in the case law in this area, and fulfilling his public duty to apply his training and judgment to make the necessary decision in a very difficult case, concluded that the accused's rights under the *Canadian Charter of Rights and Freedoms* (the "*Charter*") had been breached, and consented to the stay in October, 2012.

The Crown prosecutor clearly did not want to be in the position of consenting to a stay, but appreciated that it was the appropriate remedy given the significant delays that had occurred. Section 11 (b) of the *Charter* states that, "Any person charged with an offence has the right... (b) to be tried within a reasonable time." The Crown in this case recognized that the accused's right to a speedy trial had been violated. As stated above, the Crown prosecutor's job is to work in the public interest, and it is important to note that a Crown prosecutor is not the complainant's lawyer.

The Crown prosecutor also recognized that the circumstances that led to this stay – repeated adjournments and a lack of resources in circuit courts – would likely lead to additional judicial stays if immediate actions were not taken. As such, although it would have been legally permissible for the Crown prosecutor to have entered a stay of proceedings by letter to the Court, the prosecutor requested that this stay be entered in open court on the record. When the presiding Justice, The Honourable Madam Justice R. E. Nation, inquired as to why the Crown prosecutor didn't just enter the stay himself, the prosecutor stated: "Well, I think it was important to have something on the record - given the serious nature of the case - and, quite frankly, the systemic problems that have arisen out of Airdrie. Unfortunately, My Lady, I don't think this is going to be the first (sic) *Askov* matter that these courts or Provincial Courts are going to see coming out of circuit courts, especially Airdrie."

Timelines

There was an agreed statement of facts concerning the *Askov* application filed in this matter. It set out that the accused was charged in September of 2009 with sexual offences which were alleged to have occurred against the complainant (D.P.) between the years 1994 and 2003. A Preliminary Inquiry was held in December of 2011, and there was a committal to stand trial on most of the charges. A trial date of November 2012 was set in March 2012. A judicial stay was entered October 3, 2012.

As the transcript of the stay application hearing points out, it was agreed that after 38 months had passed, 168 days of delay occurred in the normal preparation for trial, 26 days were attributed to the defence, 444 days were Crown delay and 523 days were institutional delay.

Most of the Crown delay resulted from the need, identified by the Crown prosecutor, for additional police investigation after the charges were laid. Further delays arose from the need to disclose the results of the investigation to defence counsel. With regard to the institutional delays, the largest periods resulted from waiting for available court time.

As Justice Nation pointed out, the delay in this case totaled 38 months. Case law, including *R v Morin*, [1992] 1 SCR 771, suggests a period of 14 to 18 months as a guideline for the completion of the trial process. This case clearly exceeded those guidelines.

The *Askov* Decision

Section 11(b) of the *Charter* indicates that any person charged with an offence has the right to be tried within a reasonable time. In 1990, the Supreme Court of Canada in the case of *R v Askov* (1990), 59 CCC (3d) 449 (SCC), indicated that four factors must be considered to determine whether a delay is unreasonable. These factors are: length of the delay, the explanation for the delay (delays owing to inadequate institutional resources weigh against the Crown), waiver of delay (when defence counsel acknowledges responsibility for a delay), and any prejudice to the accused. The longer the delay, the more difficult it is to excuse. A more complex case, however, may justify a more lengthy delay than a simple case.

Prosecution requests for adjournments and systemic delays all weigh against the Crown. Ultimately, the onus for justifying delays rests with the Crown. If the Court finds that there has been a violation under section 11(b) of the *Charter*, it may grant one of several possible remedies to the accused, the most serious of which is a judicial stay of proceedings.

Setting the Context

Airdrie is a part of the census metropolitan area of Calgary and is located along the Calgary-Edmonton corridor. Airdrie has experienced significant population growth over the last decade. In 2011, Airdrie had a population of 42,564, which is a 47% increase from 2006 (n= 28,927) and a 109% increase from 2001 (n= 20,382). This number doesn't include the rural area surrounding Airdrie, which is also serviced by the Airdrie court house, including part of the Municipal District of Rocky View and the Village of Beiseker. As well, it is important to note that a major shopping complex – CrossIron Mills – was built in the area served by the Airdrie courthouse. By contrast, the average national increase in population from 2006 to 2011 was 5.9%.[5]

In 2011, the largest age group in Airdrie was 30 to 34 years (n=4265, 10%) followed by children ages 0 to 4 years (n=4,150, 10%). The median age of the Airdrie population is 32.4 years, which is younger than the Alberta average of 36.5 years and the Canadian average of 40.6 years.[6] In 2006, the median income was $83,271, which was higher than average Alberta income of $73,823.[7]

Airdrie Provincial Court Criminal Statistics[8]

Although this report focuses on adult criminal matters it is important to note that the majority of matters heard in Airdrie, and a significant portion of the court sittings, relate to adult traffic offences (speeding tickets, etc.). In 2011-12 fiscal year, 11,418 adult traffic charges commenced

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[5] Statistics Canada. 2012. *Focus on Geography Series, 2011 Census*. Statistics Canada Catalogue no. 98-310-XWE2011004.
Ottawa, Ontario. Analytical products, 2011 Census. Last updated October 24, 2012. Available online at http://www12.statcan.gc.ca/census-recensement/2011/as-sa/fogs-spg/Facts-csd-eng.cfm?Lang=Eng&TAB=1&GK=CSD&GC=4806021

[6] Ibid

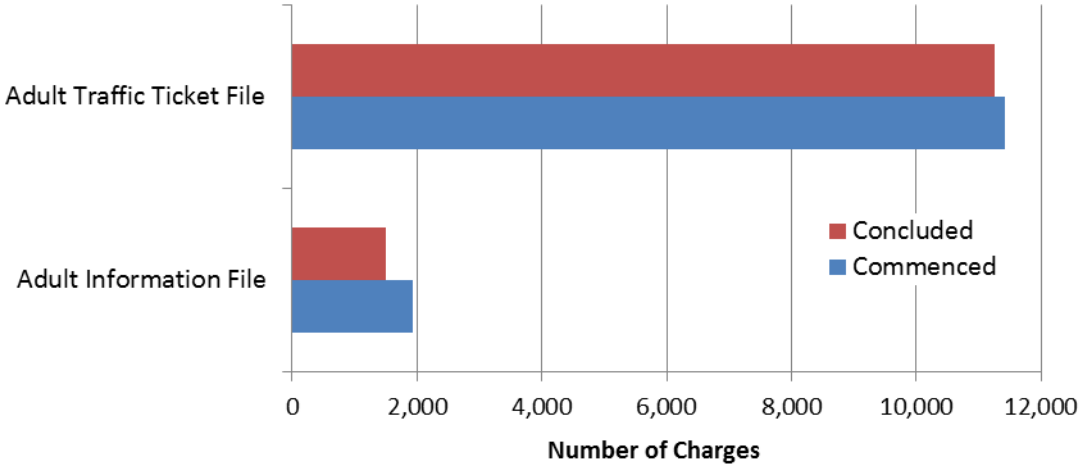
[7] Source: Statistics Canada, 2006 *Community Profiles*.

[8] Notes:

- For the purpose of this report a case is defined as an accused with one or more charges on an Information
- Federal *Criminal Code* charges only are included in the analysis, excluding other federal and provincial acts.
- Trial is indicated by dispositions – i.e. found guilty, acquittal; dismissed, not criminally responsible.
- Lead time: time from when a trial is set down to the agreed upon scheduled date.
- Courtroom utilization is reported using:
    - Court time: total hrs:mins a court is open for session - for areas where there is more than one courtroom a total of all criminal courts in session are provided.
    - Sitting days: total days criminal court is in session
    - Average court time: average time a court is in session per day.

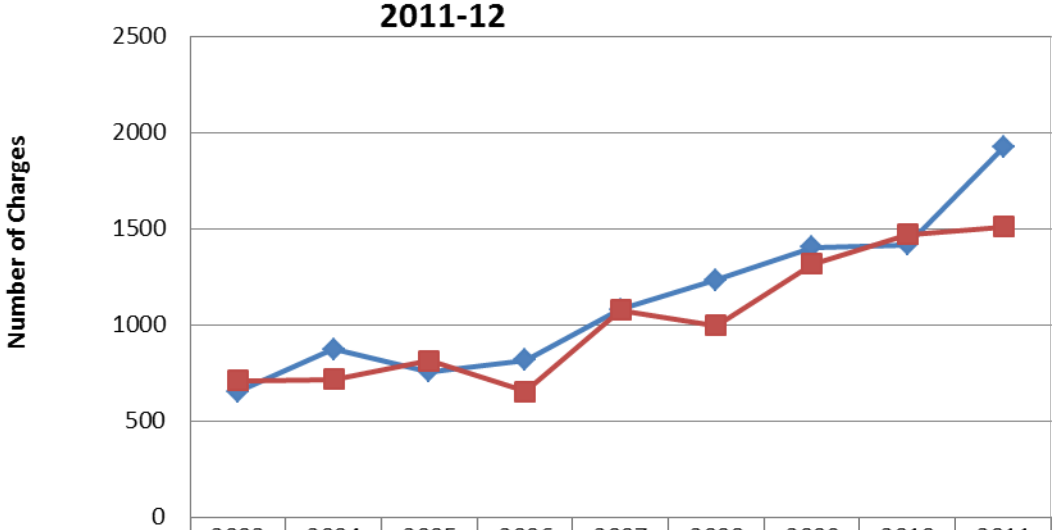
in Airdrie Provincial Court Criminal, while only 1,922 adult criminal charges (Information files) commenced (Chart 1 below). The number of traffic charges in Airdrie in 2011-12 increased significantly (18%) from the prior fiscal year.

Chart 1, Airdrie Court Matters by Type, 2011-12 Fiscal Year



As can be seen from Chart 1 above, traffic matters comprise the largest volume of offences dealt with in Airdrie courts; consequently, increasing traffic volume crowds out time available for more serious criminal cases.

Chart 2. Airdrie Provincial Court Criminal, Charges 2003-04 to 2011-12



	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Charges commenced	652	873	755	815	1080	1232	1402	1416	1922
Charges concluded	708	716	814	654	1077	995	1317	1468	1508

In addition to an increase in the number of traffic tickets there has been an increase in the number of charges commenced and concluded (Chart 2 above). In the 2011-12 fiscal year, there were 1,922 charges commenced. This is a 36% increase from the prior fiscal year. In the previous five years (2011-12 compared to 2006-07) there was a 136% increase in the number of cases commenced.

In addition to an increase in the number of cases commenced, there has also been an increase in the number of cases set for trial (Table 1 below). In 2011-12 fiscal year, there were 291 cases set down for trial in Airdrie, a 34% increase from the prior fiscal year. An increase in the number of cases set for trial has also occurred in courts located in the areas surrounding Calgary, including Canmore, Cochrane, Okotoks, and Strathmore.

Lead time measures how long it takes a case to be scheduled for trial from first appearance. In 2011-12, a case took 52 weeks on average to appear for trial in Airdrie. This was a significant increase (68%) from the prior fiscal year.

Table 1. Trial Lead Time (in Weeks) Provincial Court Adult *Criminal Code* Matters

Provincial Court Location	2010-11 Average Trial Lead Times	2010-11 Cases Set for Trial	2011-12 Average Trial Lead Times	2011-12 Cases Set for Trial	2012-13 April-Sept Average Trial Lead Times	2012-13 April-Sept Cases Set for Trial
Airdrie	31	217	52	291	41	123
Canmore	36	253	40	294	42	114
Cochrane	28	235	35	289	31	95
Okotoks	45	269	37	305	46	153
Strathmore	37	201	42	252	40	129

Source: Alberta Justice and Solicitor General (December 2012) Justice Business Information JIMS Database Reports RFC7327E

As Table 1 indicates, cases set for trial in Airdrie rose considerably from 2010-11 (217) to 2011-12 (291). At the same time, the number of court sittings per month has remained static at between 4 and 5 sittings per month.[9] For the sake of comparison, for the period 2011-12, Canmore had 294 cases set for trial and on average 5 to 6 full day court sittings per month; Cochrane had 289 cases set for trial and 4 to 5.5 day court sittings per month; Okotoks had 305

[9] Court Services statistics

cases set for trial with 8 to 10 full day sittings per month; and Strathmore has 252 cases set for trial with 3 to 4 sittings per month. [10] The number of court sitting days has increased in some of the circuit courts, but not all.

Only a small number of Preliminary Inquiries are set in Airdrie each year (Table 2 below), with only nine set in 2011-12. Unlike trials, neither the number of cases set for Preliminary Inquiry, nor the lead time to schedule an inquiry increased significantly between 2010-11 and 2011-12 fiscal years.

Table 2. Preliminary Inquiry Lead Time (in Weeks) Provincial Court Adult *Criminal Code* Matters

Provincial Court Location	2010-11		2011-12		2012-13 April-Sept	
	Average Prelim Lead Times	Cases Set for Prelim	Average Prelim Lead Times	Cases Set for Prelim	Average Prelim Lead Times	Cases Set for Prelim
Airdrie	31	12	33	9	40	5
Canmore	31	15	48	18	52	14
Cochrane	42	6	18	3	33	6
Okotoks	30	10	52	15	53	5
Strathmore	30	7	34	13	36	6

Source: Alberta Justice and Solicitor General (December, 2012) Justice Business Information JIMS Database Reports RFC7327E

It is important to note that the Alberta Crown Prosecution Service established the Calgary Rural and Regional Response Office (CaRRRO) in early 2012. This office prosecutes cases in smaller communities outside of Calgary including: Canmore, Cochrane, Didsbury, Okotoks, Airdrie, T'suu Tina Nation, Siksika Nation, Drumheller, Hanna, Strathmore, and High River. CaRRRO was established so that the Crown prosecutors in these areas would benefit from consistency (they all deal with the RCMP, for example, and have common regional concerns). It was also intended to be a "Response Unit" to help other Regional offices. Prior to 2012, prosecutions in those communities were handled by the Calgary Crown Prosecutors' Office.

[10] Ibid.

Case Dispositions

In Airdrie, 675 criminal cases were disposed in 2011-12 in Provincial Court. The majority (n=539) did not go to trial and were most commonly resolved by a guilty plea or withdrawal (Table 3 below). A fifth of the cases concluded had been set for trial (n=136). The vast majority of cases set for trial did not result in a trial actually being held on the day selected. Rather, those cases resulted in last minute guilty pleas, withdrawals, or adjournments. Collapsed trials are a significant contributor to clogged courts. While these cases don't actually "use" court time, the court time that has been set aside for them ends up wasted.

In 2011-12, a trial was heard, evidence called, or significant court time was used in only 21 cases, or 3% of all cases (Table 3). There were 2 cases where the accused was found guilty, 16 where the accused was found not guilty, and 3 cases where the accused was ordered to stand trial in the Court of Queen's Bench.

Table 3. 2011-12 Provincial Court Adult Criminal Dispositions, Airdrie

Disposition		Cases Disposed not set for Trial or Prelim	Cases Disposed set for Trial or Prelim			Total Cases Disposed
			Heard	+ Collapsed	= Total	
Alternative measures		**60**	-	5	**5**	**65**
Guilty	Plea Before Trial Set	**221**	-	-	**0**	**221**
	Plea After Trial Set	**0**	-	41	**41**	**41**
	Finding of Guilt After Trial Set	**0**	2	-	**2**	**2**
Not Guilty		**0**	16	-	**16**	**16**
Order to Stand Trial		**0**	3	-	**3**	**3**
Other*		**10**	-	5	**5**	**15**
Peace bond		**57**	-	-	**-**	**57**
Prelim waived		**7**	-	-	**-**	**7**
Stay		**7**	-	7	**7**	**14**
Withdrawn		**177**	-	57	**57**	**234**
Total		**539**	21	115	**136**	**675**

*Other includes: waived out of province, accused deceased, case quashed. Source: Alberta Justice and Solicitor General (December, 2012). Justice Business Information: Crown File Ownership Database Report RFC7327G.

Chart 3. Concluded Case by Disposition, Airdrie 2011-12 Fiscal Year

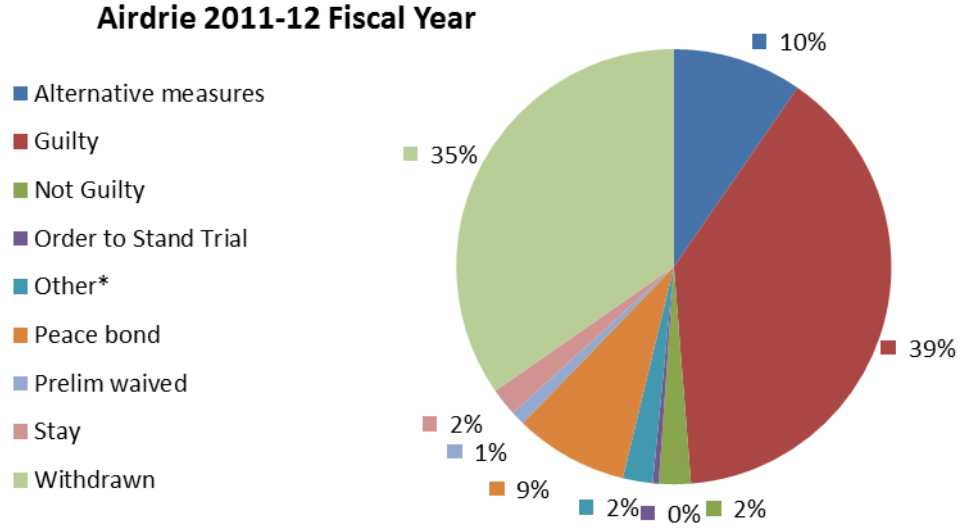


*Chart includes trial, preliminary, hearing and non-trial;

In Airdrie, Tuesdays, Thursdays, and Fridays are court sitting days, held in the morning without a break for lunch. Every Thursday and Friday the court hears criminal matters, and every Tuesday morning it hears traffic matters.

In terms of courtroom utilization, in 2011-12, there were a total of 157 sitting days, 90 sitting days for criminal matters, 51 sitting days for traffic matters and 16 special sittings days (see table 4 below). Special sittings are additional sessions scheduled outside of usual time slots and are typically used for scheduling criminal matters that cannot be heard within regular scheduled trial days due to complexity or length of trial time required.

In terms of average time spent in court, in 2011-12, the average court sitting time was 3:02 hours per day. Given that court begins at 9:30 a.m., this means that the court only sits for a fraction of the available hours of the sitting day. It is important to note, however, that even when Court is not in session, much "behind the scenes" work is going on, e.g. prosecutor is discussing matters with police and defence counsel, or preparing witnesses.

Cases in Airdrie that require one or two days can be scheduled for special sitting but there is a limit as to available court time. In Airdrie, as in all other CaRRRO Regional Circuit courts and Circuit courts throughout Alberta, courts are overbooked in order to control lead times since experience has shown, as mentioned above, that the vast majority of cases collapse on trial day. On any given trial day there may be 5 - 7 trials scheduled. The trials each generally require 1/2 day to a full day of trial time and often include *Charter* applications and can be as serious as

sexual assault and aggravated assault charges. There is significant pressure on prosecutors to resolve cases because it is rarely possible to conduct 5 or 6 trials in one day.

Table 4: Courtroom Utilization

Provincial Court		2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Criminal [1]	Total Court Time	218:54	275:40	256:27	275:59	267 : 25	255 : 22
	Sitting Days	63	74	77	94	94	90
	Avg. Court Time[2]	3:28	3:44	3:30	2:43	2 : 52	3 : 02
Traffic	Total Court Time	88:48	82:06	99:17	87:06	104:43	141:12
	Sitting Days	53	52	50	52	51	51
	Avg. Court Time	1:48	1:40	2:01	1:48	2:19	2:39:51
Special Sittings[3]	Total Court Time	11:02	40:40	13:35	48:26	28:07	6:26
	Sitting Days	11	19	9	24	14	16
	Avg. Court Time	2:45	2:42	2:15	3:01	2:41	1:28

Source: Alberta Justice and Solicitor General (December, 2012) Calgary Court Services.

Anticipated Pressures

In the future, resource pressures across Alberta will continue to grow. With the introduction of Bill C-10, the *Safe Streets and Communities Act,* by the federal government, many fundamental changes to almost every component of Canada's criminal justice system will occur, including:

- New criminal offences;
- New and increased mandatory minimum sentences;
- The selective elimination of conditional sentences;
- Increased pretrial detention and new, harsher sentencing principles for young offenders; and
- Longer waiting times before individuals can apply for pardons.

Since accused persons will be facing harsher punishments in the future, it is possible they will increasingly set their cases down for trial rather than plead guilty early, since there will be

"nothing to lose." If this scenario comes to fruition, it will further increase time to trial and heightens the need for immediate action.

Furthermore, Alberta's population growth has placed additional pressure on the system, and not all court locations have the resources and infrastructure to absorb the influx of newcomers. The communities surrounding Alberta's urban cores of Calgary and Edmonton – places like Airdrie, Cochrane, Beaumont, and Leduc – are experiencing extremely fast population growth, but lack the infrastructure and human resources that are available in Edmonton and Calgary. The fact is that Airdrie, and many other booming cities, are poorly serviced by courthouses with single courtrooms, which were designed for populations 40 - 50 years ago.

Significant Causes of Delay in the Airdrie Case

1. Incomplete investigation and delayed disclosure

Charges in this case were laid at a very early stage, and were based mainly on a limited number of witness statements. After charges were laid, the Crown prosecutor was advised of additional information that required the police to go back to the complainant and conduct more interviews. All of this had the effect of delaying disclosure and setting back the dates for the Pre-Preliminary meeting and the Preliminary Inquiry. Charges in this case were laid prematurely. It is important to note that the *Askov* clock begins to run only after charges are laid, and that there is not a limitation period for laying indictable charges. If the investigation had been completed before charges were laid, it is very likely the case would not have been stayed. Police and Crown prosecutors share responsibility for insuring that investigations are completed before charges are laid.

2. Unnecessary and Repeated Adjournments

In this case, 38 months elapsed from the date the charges were laid to commencement of the trial. This time period included time for the accused's election, a Pre-Preliminary Inquiry meeting, the Preliminary Inquiry, and time between the committal to stand trial and the trial date in Queen's Bench. The reasons for delay are complex, as this case illustrates. Here is a breakdown of each of the steps:

First Appearance:
The accused was arrested on September 9, 2009 and released to attend court on October 1, 2009. This is a period of less than one month, which given circuit court availability and the need to find counsel is not unreasonable.

Election:
A period of three months elapsed from the accused's first appearance to his election. In part, the delay was caused by initial disclosure not being available at first appearance (including transcripts of the investigative interviews). The election was also delayed by two bail variation applications at the behest of the accused.

Pre-Preliminary meetings:
Sections 536.3 to 536.5 of the *Criminal Code of Canada* govern "Procedures Before Preliminary Inquiry." These provisions were proclaimed about 10 years ago when it was recognized that time to trial was expanding and that the Judiciary needed to exercise case management to

accelerate matters and get to trial faster. Ironically, the Pre-Preliminary procedure followed in this case had the opposite effect.
Upon electing Judge and Jury, counsel for the accused noted that no Preliminary Inquiry could be scheduled until the Pre-Preliminary Inquiry meeting was done. The first Pre-Preliminary Inquiry meeting date in this matter was set two months after the election was recorded.

Because of repeated adjournments, nine and a half months elapsed until the Pre-Preliminary Inquiry meeting was finally completed. Only then were dates selected for the Preliminary Inquiry. Ultimately, no admissions were made by the accused. The complainant, her mother, sister, and school friend were the identified witnesses. The witnesses were readily known in the disclosure package given to defence counsel shortly after charges were laid. On analysis, there appears to be no legitimate reason the required documents could not have been filed at the first Pre-Preliminary Inquiry meeting date and a Preliminary Inquiry date set then, if not sooner.

If the Preliminary Inquiry date had been set well before the Pre-Preliminary Inquiry meeting had been conducted, it is quite possible the case would not have been stayed.

Preliminary Inquiry:
The Preliminary Inquiry is an historical feature of our criminal procedure. The purpose of the Preliminary Inquiry is to determine if there is sufficient evidence to set the matter down for trial. Unless the Deputy Attorney General files a Direct Indictment, until recently a relatively rare event, the accused may insist on having a Preliminary Inquiry where the charges are serious.

In this case, the first Preliminary Inquiry date was set for June 17, 2011, which is approximately 20 months after the first appearance. This is a significant delay. In this case, the vast majority of the delay was before the Preliminary Inquiry, not between Preliminary Inquiry and trial.

If there had been no Preliminary Inquiry in this case, it is likely the case would not have been stayed.

Trial date:
The accused was ordered to stand trial on December 16, 2011 and his first Court of Queen's Bench appearance date was set for February 10, 2012. Once the file was in Court of Queen's Bench, it moved along in an appropriate timeline, and within one month (March 9, 2012) a trial date was set. That date was November 5, 2012 - eight months after it was scheduled. Factors that may have led to this delay include the fact that court does not sit in July or August, and that the accused was not in custody (although this factor would have lesser weight).

Ultimately, November 5, 2012 was the first common available date for both lawyers. Although the delay in the Court of Queen's Bench was significant, it was far less than the delay in Provincial Court at the Preliminary Inquiry stage.

3. Systemic acceptance of delay

In reviewing this case, I couldn't help but notice that all court participants seemed to lack a sense of urgency in getting this case though the courts. Adjournments and delays were seen as par for the course. This is not an indictment against the prosecutor, defence counsel or judges in this case. There is a cultural acceptance of delay that has permeated the system. The courts are so congested, the process so convoluted, and court participants so busy, that delays are readily accepted. Often justice system participants are juggling too many balls in the air, and insufficient attention is paid to moving serious and violent cases with dispatch.

For instance, when defence counsel requests an adjournment to review new disclosure at the preliminary stage, even when that disclosure is minimal, adjournment requests tend to be granted without question. Pre-Preliminary meetings and Preliminary Inquiries are conducted, even when it is known in advance that they will not add much value. When a trial is set down in eight months' time, that delay is considered normal, because justice system participants take into account summer holidays, the limited court hours and sittings, and the difficulties of matching schedules for the Crown prosecutor, defence counsel, and witnesses. These delays are considered acceptable to court participants, with little thought given to how this must appear to members of the public, or the impact the delay has on the goal of achieving a just result.

Further, there is a tendency for every court participant in the justice system to look after their own best interest, with insufficient regard given to the overall process. Court participants go through the criminal justice process without asking critical questions such as: Is this step necessary? If so, how can I complete this function in the quickest manner possible?

Crown prosecutors, defence counsel, and judges could each do more to manage cases and ensure that the justice system flows appropriately. When cases fall through the cracks because of delays, and accused persons in serious and violent cases do not even make it to trial - there is a problem, and everyone is accountable. As head of the Alberta Crown Prosecution Service, I accept that I am accountable. Thus, to ensure my accountability is transparent and these types of circumstances do not repeat, the following is my approach.

Our Response – Immediate Actions and Longer Term Solutions

1. Incomplete investigation and delayed disclosure

Immediate Actions

Enhanced pre-charge consultation on serious and violent cases

This case involved serious allegations of historical sexual abuse, which are very difficult to prove. It would have been useful for the investigator to speak to the Crown prosecutor prior to laying charges, as the Crown prosecutor would have applied a more onerous test and may have requested more investigation before any charges were laid. The prosecution standard is "reasonable likelihood of conviction" while the police standard is "reasonable and probable grounds."

As the Alberta Crown Prosecution Service's newly drafted handbook *Best Practices for Investigating and Prosecuting Sexual Assault* states:

> The area of historical sexual offences is highly technical. Police encountering these cases should seek legal advice from a Crown prosecutor before charging and ensure that they are citing the relevant *Criminal Code* offence provision for the date of the occurrence. If possible, police should obtain this advice in writing.

As this case demonstrates, at a minimum, in all serious and/or complex cases province-wide, pre-charge consultation with an appropriate Crown prosecutor should occur. For this to happen, agreements currently in place in various areas of the province should be reviewed, updated and made the subject of province–wide implementation for all serious and/or complex cases. This is particularly important when police agencies do not have specialized units trained to investigate specific case types, such as sexual assault. Pre-charge consultation is also important when police do not regularly handle these types of investigations.

The Standing Committee on Prosecutions and Enforcement (S.C.O.P.E.) worked out a protocol between police and prosecutors in 1994 regarding pre-charge consultation on a number of restricted cases. The guideline reads as follows:

> It is recognized that pre-charge consultations between police and Crown would be advantageous and beneficial and would avoid any appearance of disagreement by charges having to be withdrawn or altered because of an assessment by the Crown that

there is no reasonable likelihood of conviction. It is also recognized that in the majority of cases pre-charge consultation is not practical. However, there are some cases where pre-charge consultation on an informal basis is possible and should take place because of the advantages and benefits. This guideline sets out the types of cases, in general, where informal pre-charge consultation should take place between the police and Crown.

Informal pre-charge consultation between police and Crown should take place in the following cases and circumstances:

1. All homicide cases where immediate arrest is not necessary and/or investigation has been prolonged and prosecution will, therefore, be protracted.
2. Other major crimes where immediate arrest is not necessary and/or investigation has been prolonged and prosecution will, therefore, be protracted.
3. Complex cases where investigation has been prolonged and prosecution will, therefore, be protracted.
4. Cases where police are uncertain of the appropriate charge to lay.
5. Cases where police are of the view it is questionable whether the evidence supports a charge.

Cases under (1) above should be referred directly to the Chief Crown prosecutor or his designate for consultation.

In all the other above cases and circumstances, police investigators should confer with the Chief Crown prosecutor or an Assistant Chief Crown prosecutor or their designate for consultation.

If the above procedure is followed there will be fewer charges laid that have to be withdrawn or altered solely because of differences of opinion between police and Crown thereby better serving the administration of justice.

…

Nothing in this policy guideline should be construed as limiting the right of the police to lay appropriate charges in any case.

The S.C.O.P.E. pre-charge consultation protocol provides a solid basis for discussion of how pre-charge consultation is handled in the province. However, since it was written almost twenty years ago, it may be that the protocol deserves renewal and further discussion.

The potential benefits of revisiting pre-charge consultation are significant. Where mandatory Crown pre-charge consultation exists, the police will not "clear the case by charge" based solely on reasonable and probable grounds. They will have had the benefit of guidance from the Crown prosecutor and this, our experience has shown, will invariably lead to a better investigative product.

This is something the Crown Prosecution Service cannot do unilaterally. However, I am committed to advancing this recommendation, and I hope to bring policing agencies in Alberta, and our sister prosecution service, the Public Prosecution Service of Canada, on board.

Education regarding Best Practices for Investigating and Prosecuting Sexual Assault

In 2009, the Sexual Assault Sub-Committee (comprised mainly of Crown Prosecution Service staff, police officers, and sexual assault center representatives) was tasked with implementing the recommendations made in the *Chief Crown Prosecutor Report to Improve the Criminal Justice Response to Sexual Assault*. To satisfy a number of recommendations relating to education and training of police, Crown prosecutors, medical personnel, and others, the Committee decided to develop a sexual assault handbook containing best practices.

Through discussions with senior Crown prosecutors, police officers, sexual assault and victim service advocates, sexual assault examiners, health care professionals, and others working with sexual assault victims and offenders, the Sexual Assault Sub-Committee gleaned knowledge regarding the impact and effect of this crime on victims, as well as the resources available to assist victims. Using this valuable information, as well as academic literature, *Best Practices for Investigating and Prosecuting Sexual Assault* was produced.

The handbook was completed in November 2012 and has been sent to all Crown prosecutors and police services in the province. This comprehensive version of the Handbook is not available to the general public yet, as it contains detailed criminal justice information. In the future, a version of the handbook oriented for use by the general public will be posted on the Justice and Solicitor General website. It will not contain sensitive information related to police investigations or criminal prosecutions. As well, a succinct and easy to use field guide for police will be developed.

Now that this comprehensive resource has been developed, Alberta Justice and Solicitor General is working to ensure that police and Crown prosecutors are aware of, and utilizing this resource. I've sent the Handbook, with an email, to every Crown prosecutor in the province. The Handbook has also been placed on our intranet site and was featured in an article in *The Newsroom*, our internal newsletter. The more information police and Crown prosecutors have on this horrendous crime, the better.

The proper use of this handbook should ensure that sexual assault cases are better prepared prior to charges being laid, which would avoid a great deal of the delay experienced in the Airdrie case.

Longer Term Solutions

Senior police member consultation/review of serious and violent cases, pre-charge

Just as it is important for senior Crown prosecutors to review serious and complex cases with junior prosecutors, it is also important for senior police members to assist junior members with the investigative process before charges are laid. Senior members can mentor junior members and assist them in determining whether additional evidence is necessary prior to laying a charge.

As responsibility for this longer term solution lies with police, it is not something the Crown Prosecution Service can implement on its own. However, we do have influence. We will have to work with policing agencies to advocate for greater senior police member consultation.

I hasten to add that Albertans are very well served by the professional and highly motivated policing agencies in this Province. It has been my honour to work with them for over 25 years. There is always room for improvement, however, and the Crown Prosecution Service is willing to assist in that regard.

2. Unnecessary and Repeated Adjournments

Immediate Actions

Expand the Court Case Management (CCM) Program, including the use of Case Management Offices (CMOs)

The Court Case Management Program, which began implementation in February of 2010, is led by the Provincial Court of Alberta, which works in collaboration with the Alberta Crown Prosecution Service, the Court Services and Technology and Business Services Divisions of Alberta Justice and Solicitor General, the Public Prosecution Service of Canada, and representatives of the defence bar. The objective of CCM is to make more efficient and effective use of criminal justice resources, and improve the lives of those using and accessing the court system, through improved court case management processes and innovative technological solutions. Thus far, CCM systems and processes have been introduced in Edmonton, Calgary, Wetaskiwin, Okotoks, Medicine Hat, Airdrie, Canmore, and Red Deer. The CCM office opened in Airdrie on November 1, 2012. Plans to expand the program across Alberta are in place, subject to budget implications.

CCM is all about addressing congested courts and has been, by far, the most successful initiative that I have seen anywhere in Canada.

One component of CCM is the Court Case Management Office (CMO)/Justice of the Peace (JP) Counter, which allows administrative and non-contested matters to be dealt with outside of the courtroom, freeing up time for the judiciary to address substantive legal matters, and providing defence counsel with additional flexibility when booking their trials. The CMO/JP counters have experienced great success so far:

- The CMO now handles over 7,000 appearances each month in the areas where it has been introduced. Pre-CCM, these matters went before a judge in a courtroom and took up valuable court time and resources.
- The estimate is that the CMO has seen a benefit of nearly $6,000,000 in time savings (year over year) for judges, prosecutors, court clerks, and defence counsel. In Edmonton, this has allowed for the reassignment of a clerk to the CMO counter and one to assist as a second "writer" in high volume courtrooms, which has not been possible for the last couple of years.
- Adding a CMO to small court locations effectively adds an additional courtroom without the added infrastructure costs.

While CMO/JP counters have been very successful, it would be worthwhile to consider what other types of appearances may be heard at CMO counters, thus releasing court time for trials. Since the Airdrie CCM rollout only took place on November 1, 2012, it is anticipated that some of the benefits experienced in other court points will be realized during 2013.

Another component of CCM in Calgary and Edmonton is the "Assignment Court" process. Through this process, all those attending court for all trials on a given day (i.e. all Crown prosecutors, defence counsel, accused, and witnesses) must first attend, at the same designated hour, an "Assignment Courtroom". The presiding Provincial Court Judge will assess which trials are ready to proceed and those trials will be sent to a "Trial Courtroom", where the trial will commence. In theory, this process will ensure that courtrooms are not left empty and matters are dealt with efficiently. Conceptually, where cases once "lined up" in individual trial courtrooms like shoppers line up for a cashier at a grocery store, now all cases "line up" together to be dispatched to an available courtroom like customers waiting for a bank teller. Experience with assignment courts since they were instituted in 2010 has shown that the assignment court process is far more efficient.

Experience has also demonstrated, however, that there are practical and inter-related challenges with this process. First, not everyone arrives to the Assignment Court on time. For some trials, everyone will be in attendance and ready to proceed, while for other matters, a witness, the accused, or even counsel may be late. A trial cannot commence if a key participant is missing. Second, on any given day there are more trials scheduled than available Trial Courtrooms. This "overbooking" is permitted given the expectation that many trials will not proceed for one reason or another. Sometimes, however, overbooking can result in trials being adjourned because they cannot be accommodated in the courts that day. This leads to a third problem. The presiding judge may treat all trials equally, with matters being sent to trial courts on a *first-come, first-serve* basis. The relative seriousness of the allegations may not be considered. As a result, a trial on a relatively minor matter (for which everyone is present), will be sent to a Trial Courtroom before a trial of a serious violent offence (for which someone is late). Nor are other factors – such as whether or not the accused is in custody and the length of pre-trial delay – always considered in determining the order in which matters are sent to a Trial Courtroom.

This experience further highlights the need for all criminal justice system participants to consider means by which factors such as seriousness of the offence, bail/remand status of the offender, and delay should influence the order in which cases are moved from the Assignment Court to the Trial Courts. While people – particularly counsel whose job it is to attend court –

should never be late for court, the Assignment Court process (or any process by which trials are scheduled) should be crafted so as to ensure that a serious violent offence will not be "bumped" by something less serious that just happens to be ready to proceed first. Whether in a jurisdiction with CCM or elsewhere, there must be a sense of urgency in dealing with serious violent offences. I will work with the judiciary, the court administrators, and the defence bar to address this issue.

Increase Crown File Ownership

In the Airdrie case, the prosecutor was assigned the file on January 26, 2010, which was approximately 4.5 months after charges were laid. Given the nature of the case, a Crown prosecutor should have been assigned sooner. In Edmonton and Calgary, through CCM, Crown File Ownership has already been implemented, resulting in the near-immediate assigning of such files. It is now time to expand File Ownership to the regions.

Thus far, the impact of Crown File Ownership in Edmonton and Calgary has been positive:

- By assigning one Crown prosecutor to take a file from beginning to end, communication between the Crown prosecutor, defence counsel, and witnesses has improved.
- A reduction in collapses on the day of trial has resulted in:
    - Fewer police officers subpoenaed to attend court for a matter that does not proceed; and
    - Fewer courts going unused.

It is important to note that, in Edmonton and Calgary, Crown File Ownership is possible only because of fundamental changes made, through CCM, to the scheduling of Provincial Court cases there. This is another example of CCM's successes to date.

Ideally, assignment for all serious and/or complex files should be accomplished no later than 30 days after the accused's first appearance. Where pre-charge consultation is in place, assignment of the case to a Crown prosecutor (other than the Advisory Crown) can be made during that process, so that a Crown prosecutor is involved in the case from the first court appearance.

This is something the Crown Prosecution Service can implement unilaterally, and I commit to moving it forward.

Increase the use of technology and Business Intelligence

Alberta Justice and Solicitor General has developed a Business Intelligence (BI) tool that can analyze court statistics to provide valuable insights into the functioning of the justice system. BI refers to the business use of analytical software to access data, provide performance reporting, and predictive analytics. BI also refers to an organization's capability to use this information strategically to gain business value. While the software is in its infancy, it has already proven useful in this review. Through the use of BI we can track how long cases are taking, how often courts sit, which courts are the busiest, and what kinds of matters take up the most court time.

I believe we should be using this technology to track all cases, and that BI should be perfected such that it can flag serious and violent cases at risk of an *Askov* application, so that we can properly manage those files.

Shift cases to other court points

This review has revealed to us that certain court locations, mainly those in circuit points, are extremely busy and are most at risk of *Askov* applications. It is of note that there are three locations in Alberta booking trials into 2014: Canmore, Okotoks, and Bonnyville. Currently, Bonnyville has three cases set for July 2014. Lead times in Bonnyville are approaching 21 months, when the target is around 20 weeks. These small circuit courts only sit a few times per week, or sometimes as little as twice per month, and it can be difficult for them to keep up to the demand for court time, especially since the population growth in some of these locations is booming.

In situations where a circuit court is extremely busy and cannot handle lengthy or complex criminal cases in an effective and timely manner, thought should be given to moving cases to the nearest courtroom within the same judicial district with open court dates. In a city like Airdrie, this could include moving matters to Calgary. It is important to note, however, that moving cases into Calgary could produce longer times to trial in Calgary, and so caseloads would need to be considered.

The Provincial Court of Alberta has sole jurisdiction to move cases from one sitting point to another. I know that the Provincial Court is mindful of the time to trial issues throughout the Province and in the Regional hot spots in particular, and is motivated to insure that cases are not lost because of delay. I commit to lending any support the Crown Prosecution Service can to this effort.

Change the Pre-Preliminary protocol

As mentioned above, court scheduling is within the jurisdiction of the Court, not the Crown Prosecution Service. With respect, I believe that the setting of a Preliminary Inquiry date should not be tied to the completion of the Pre-Preliminary Inquiry meeting. Optimally, a Preliminary Inquiry should be set immediately after the accused's election is made and at the same time as setting the Pre-Preliminary Inquiry meeting date. If the Pre-Preliminary Inquiry meeting reduces the length of the Preliminary Inquiry, the dates already set could be adjusted.

Counsel should be required to work out matters in time for the court-set Preliminary Inquiry date, rather than the court setting a date to convenience counsel who may not be fully retained, or may require further investigation of their case. In jury trial situations, the Court of Queen's Bench often sets the pre-trial conference, the jury selection and the trial commencement date simultaneously at the arraignment. There is no magic to this. Counsel know dates and should, in Provincial Court, be required to work towards those dates, rather than leaving matters open-ended.

Increase the use of Direct Indictments

A Direct Indictment removes the need for a Preliminary Inquiry and allows a case to proceed directly to trial in the Court of Queen's Bench. "Preferring", or laying, a Direct Indictment is not done by the Courts. Although the *Criminal Code* stipulates that a Direct Indictment is preferred by the Attorney General, the Deputy Attorney General has authority to take this step. In Alberta, all Direct Indictments are signed by the Deputy Attorney General after receiving a recommendation from the Prosecution Service. In order to preserve the independence of the Prosecution Service, the Attorney General is not consulted, nor does he or she play any part in this process.

Traditionally, Crown prosecutors have viewed getting a Direct Indictment signed by the Deputy Attorney General as an extraordinary step, although I can say that Alberta currently uses Direct Indictments far more than any other province. A new policy is being drafted to encourage greater use of this process given our view that Preliminary Inquiries are not as valuable as they once were and that there is a need to have cases proceed more expeditiously. Educational materials are being prepared for Crown prosecutors on the process of how to obtain a Direct Indictment, and they will be distributed once prepared.

This is something that the Crown Prosecution Service has considerable ability to influence and I commit to moving it forward.

Triage serious and violent criminal cases

As I stated in the introduction to this report, I commit to doing whatever is necessary to prevent **any** serious violent case from being lost because of delay. Regardless whether any other solutions above bear fruit, the Crown Prosecution Service has control over which cases live or die. Were we to identify , through BI or simple case monitoring, those serious violent cases that are courting *Askov* delay, we could create court time by applying to have less serious cases adjourned, or by simply staying or withdrawing them. This would be a last ditch effort to avoid an *Askov* situation in a serious and violent case and could potentially result in many less serious cases being lost in the process. I believe, however, that the public would support sacrificing many less serious cases to enable a case like the one in Airdrie proceeding.

Longer Term Solutions

Adding additional justice resources

The truth is that smaller centres outside of Alberta's major cities are booming, and courts are not able to keep up with increased demand. In places like Airdrie, populations can increase by over 100% in less than ten years. Court resources and staffing levels have not kept up to this rapid growth, and as such, there is pressure on staff in circuit points to manage the heavy work load. Adding additional resources to the Crown Prosecution Service, the Court, Court Services, and Legal Aid is an option that cannot be ignored.

I include this recommendation in my report with considerable trepidation. As an unelected government official, it is my responsibility to draw resourcing concerns through appropriate channels to elected officials where funding decisions are ultimately made. My responsibility does not end there, however. I do not have control over the allocation of taxpayers' money to the justice system and I fully recognize that there are many competing priorities for the spending of that money, particularly in these trying economic times. I do not envy the task of setting those priorities and I have the greatest of respect for those who do. My responsibility is to properly play the hand that I am dealt – to work with other justice system officials to insure that resources are being spent as efficiently and effectively as possible and to address hot spots through this collaborative process as effectively as possible.

That being said, I would be remiss if I did not reflect in this report that these pressure points in Regional centres exist.

Implement proportionality, especially with regard to traffic cases

As can be seen in the "Setting the Context" section of this report, traffic cases are by far the most frequent kind of case in the courts. In fact, there are so many traffic cases heard in court that it eats into the time that could be used to address serious and violent criminal matters. While the prosecution of traffic offences is important, the significance of a minor traffic offence just doesn't compare to that of a serious and violent crime.

The automation of ticket issuing (e.g. photo radar) has led to a large increase in the number of tickets issued, and therefore, an increase in in the volume of prosecutions over the past six years. There is presently a significant waiting period to resolve provincial statute offences throughout Alberta. The average lead time for Provincial Court Traffic trials was 31 weeks in Edmonton in 2011-12. This is an increase of 35% since 2007-08 when electronic tickets were first introduced. In 2011-12, there were a total of 1,916,723 traffic tickets issued in Alberta. Of this number, 1,008,226 (53%) were electronic tickets. The number of tickets that went to charge (tickets unresolved by their due date) was 1,074,994 (56%).

As the vast majority of provincial offence charges relate to matters that are regulatory and minor in nature, a key objective is to establish a fair and efficient method of resolving these matters proportionately to the complexity and seriousness of the offence. Currently, citizens dealing with traffic tickets are subject to numerous rules, and formal processes as is required by the court system. The most citizen-friendly and efficient way to resolve traffic tickets would require a shift towards a dispute resolution option outside the court system by making most traffic tickets, where jail is not a possible sentence, subject to administrative penalties, rather than quasi-criminal sanctions.

The outcome of these improvements would provide faster, more comprehensive and coherent results that better serve and meet citizens' needs. It would also free up valuable resources for the prosecution, Police and the Court to deal with more serious matters such as criminal or family litigation and use significantly fewer resources, resulting in cost-savings to the justice system.

This solution would be a complex one and would engage other Ministries of the Government of Alberta and municipalities. The game would, however, be worth the candle, in my opinion.

Eliminate Preliminary Inquiries

Preliminary Inquiries are largely an anachronism. My Minister, the Honourable Jonathan Denis, recently proposed at a Federal/Provincial/Territorial Ministers Responsible for Justice meeting that Preliminary Inquiries should be eliminated in all but the most serious cases, like murder. This is something that the Government of Canada would need to enact, as an amendment to the *Criminal Code.* If the majority of Preliminary Inquiries were eliminated, time to trial could be accelerated enormously, provided pre-charge consultation exists and full disclosure is available to the prosecution and the accused.

Historically, Preliminary Inquiries existed for two reasons. The first was to provide disclosure to the accused of the case he had to meet. Since the 1991 Supreme Court of Canada decision in *R. v. Stinchcombe* this disclosure obligation is being met by the prosecution being required to disclose all potentially relevant evidence in its possession. The second reason was to make sure sufficient evidence exists for the accused to stand trial. The current test for an accused to be committed to stand trial is that there is "some evidence" upon which a properly instructed jury could return a verdict of guilt. This is a lower standard of proof that the current standard of "reasonable likelihood of conviction" used by the Alberta Crown Prosecution Service and the Public Prosecution Service of Canada. This shows that the historical reasons for the existence of Preliminary Inquiries are being met in other ways.

3. Systemic acceptance of delay

Immediate Actions

Crown office case management and tracking

It is recommended that assigned prosecutors closely watch their caseloads to ensure timeliness for all cases. In particular, within 30 days of an accused's election, a Pre-Preliminary Inquiry meeting should be held and the date for the Preliminary Inquiry should be set, regardless of case issues. Further, Crown prosecutors should work diligently to try and get their cases to trial within 18 months post charge. New technologies such as Justice BI can be used to track cases and help keep timelines on track. A technical solution is being developed that would provide an alert to flag serious and violent cases at risk of an *Askov* application, due to the time the case is taking to proceed through the court. In addition, it has been proposed that a monthly report of all at-risk cases be provided to the Chief Crown prosecutor of each Crown Office to ensure oversight.

Crown education (intranet, lunch box seminars, etc.)

Crown prosecutors are taught many topics in Crown School. Crown School is held every July and is directed at prosecutors in their first three years of practice with the Alberta Crown Prosecution Service. Other education programs and resources (Crown conferences, lunch box seminars, and online education material) are available for all Crown prosecutors. The Education and Knowledge Management Unit of the Crown Prosecution Service will be reviewing existing educational material respecting Preliminary Inquiries to ensure information is provided about Direct Indictments and about ways to shorten Preliminary Inquiries to, for example, make better use of the provisions of the *Criminal Code* that allow for the presentation of evidence other than by witnesses testifying in court.

As well, a standard written argument on an *Askov* application, prepared by a senior member of the Calgary Prosecution Office, was circulated to all Crown prosecutors in the department for their use when they encounter such an application. It has also been posted to our intranet site.

Longer Term Solutions

Proactive case management by judges

As Judge Constance Russell stated in her article entitled *The Creation of Proactive Judges and How to Get Along With Them*: "Judicial case management starts from the normative assumption that "it's the client's case." From that starting point comes the notion that judges and courts have a duty to the public to handle cases in a timely and efficient manner – with the help of lawyers or in spite of lawyers' desires regarding management of a particular case."[11] She goes on to state that judges who believe they are responsible for managing their dockets will be proactive and do everything necessary to avoid unnecessary delay and wasted court time. Such judges, she argues, follow a few basic principles: (1) get involved in the case early, (2) set meaningful deadlines, (3) insist that lawyers meet deadlines, and (4) follow up to ensure cases are progressing.

Judicial case management includes early and continuous judicial control of the proceedings, scheduling matters as swiftly as possible, reasonable accommodation of lawyers while holding them accountable, and an expectation that hearings will accomplish what they are scheduled to achieve.

[11] Available at: http://www.gacdl.org/zoomdocs/seminar-materials/2006/The%20Creation%20of%20Proactive%20Judges%20and%20How%20to%20Get%20Along%20with%20Them.pdf

I would like to encourage Judges to assert greater control over the preparation for and conduct of hearings. I say this as head of a Crown Prosecution Service of over 300 prosecutors who sometimes need their feet held to the fire by a strong and demanding referee. Prosecutors exercise discretion in their cases independently and properly assert that their exercise of discretion should not be interfered with, even by judges. There are limits to this independence, however. Courts have exclusive power over case scheduling and with that power comes the corresponding responsibility to insure cases move with dispatch. Effective case management by the Courts promotes the prompt and efficient disposal of cases while maintaining public confidence in the justice system. I believe a "no nonsense" approach from the entire judiciary is necessary to move criminal cases along swiftly.

Judges set the tone in the criminal justice system. Cultural change is hard and I expect that the culture of delay will be a very difficult one to break. It cannot be broken, however, without strong judicial leadership. Thankfully, in Alberta, we have forward thinking and highly dedicated leaders in the Provincial Court, in which over 95% of criminal charges are dealt with. I commit to assisting the Chief Judge of Alberta's Provincial Court in any way that I can to change the culture in our system for the better.

Electronic case processing

Police services in Alberta are developing ways to provide the prosecution with police reports in an electronic format. This is just one part of the solution, however, as prosecutors then need to be able to utilize the electronic reports to create the prosecution file and provide disclosure to the accused or defence counsel. Alberta Justice and Solicitor General has identified a document management software solution, and is working hard to advance electronic case processing. A preliminary test of this software has been completed by the CCM Program, which yielded positive results.

Without electronic case processing systems in place, we cannot reduce or eliminate the handling of paper in prosecution offices. This solution, therefore, is important to increasing the overall efficiency and effectiveness of the criminal justice system.

Conclusion

Serious and violent criminal charges, which include the crime of sexual assault, require skilled and thorough investigations coupled with timely and vigorous prosecutions. Because of the right to be presumed innocent until proven guilty and the right to be tried within a reasonable

time, the Crown Prosecution Service must always be vigilant in directing resources to those crimes of greatest concern to the public.

Problems of delay are not limited to Alberta, and in fact, this is a national and international problem that many jurisdictions have tackled. Other provinces, including British Columbia, Newfoundland and Labrador, Ontario, and Manitoba, have dedicated resources and brilliant minds to enhancing justice efficiencies. However, changing complicated criminal justice processes is time consuming and extremely difficult. Changing culture is, as I have mentioned above, the most difficult of all.

We have been striving to find justice efficiencies through our work on Federal-Provincial-Territorial (FPT) committees. We will continue to work with other jurisdictions to ensure that, as our criminal justice system faces new challenges, it remains fair, efficient and responsive. FPT Ministers responsible for Justice and the judiciary agreed, in 2003, that some of the major participants in the justice system should work together to recommend solutions to problems relating to the efficient and effective operation of the system. Solutions may include the implementation of best practices as well as legislative amendments.

As this report indicates, efforts by the Crown Prosecution Service to reduce *Askov* stays will need to involve all justice system participants within Alberta. For example, we will need to work with police to ensure that the right charges are laid at the right time. As well, we will need to work with the judiciary to find ways to better manage and schedule court time. We also need to work with defence counsel who, as officers of the Court and representatives of the Bar, share in the responsibility for building and maintaining a justice system we can be proud of. It will be important for all justice system officials to look at the system in a holistic manner, rather than focusing only on their piece of the puzzle. While everyone has a particular agenda, the main concern should be providing the best justice services to Albertans.

This report lays out a series of immediate and longer term responses to improve the criminal justice system in Alberta, in order to reduce delays and avoid *Askov* applications. Clearly, these solutions will not be easy to implement. If changing the system was easy, it would have been done by now. There is a reason that every jurisdiction in Canada is having similar problems, and likely, a lot of it has to do with the criminal justice culture and the systemic acceptance of delay. While the Airdrie case was tragic, it might come as some consolation to the complainant and her family that it served as a serious wake up call. Hundreds of letters have poured into the Ministry, and people are demanding action. They realize it is not acceptable to let cases of serious and violent crime slip through the cracks. It is up to all of us in the system – it is up to me - not to let these people down.