Criminal Justice in Canada
Initiatives, Issues, and Considerations

Introduction

The following document contains a nation wide canvas of some of the past and current initiatives in Canada regarding identification of issues and proposed solutions to increase efficiency and effectiveness of the criminal justice system. This document seeks to highlight a representative sample of reform initiatives and issues relating to all players and participants in the justice system in Canada and does not purport to be an exhaustive list. The reform initiatives listed below are intended to provide a snap shot of national reforms, to provoke discussion, highlight issues, and prompt considerations for future reform to the Criminal Justice System in Canada. A brief synopsis of the initiatives is provided along with reference information to obtain the entire document where available.

Major Reports and Initiatives

Current Initiatives

The Steering Committee on Justice Efficiencies and Access to the Justice System

The Steering Committee is currently examining the issues of self-represented accused and jury reform.

The Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 http://www.majorcomm.ca/en/index.asp

The *Air India Inquiry* has been examining the issue of whether the unique challenges presented by the prosecution of large and complex terrorist cases are adequately addressed by existing practices or legislation and, if not, the changes in practice or legislation that are required to address these challenges. The Commissioner's inquiry has revealed that the prosecution of terrorists act is likely to result in challenges similar to that associated with the prosecution of mega-trials. The Commissioner's recommendations are expected to include recommendations for mega-trial reform.

The FPT Working Group on Criminal Procedure

Amongst other issues, the Working Group is currently examining:
- Electronic disclosure;
- Sealing orders;
- Routine police evidence;
- Bail reform (including whether a legislative response to the SCC decision in *Shoker* is needed in the bail context);
- Out-of-province (non-returnable) warrants.

The Justice Effectiveness Initiative

At their September 2008 meeting, FPT Ministers agreed on the importance of an effective criminal justice system, and supported a provincial-territorial agreement to share information and best practices based on their own experiences and innovative operational reforms. Ministers also stated there are many areas in which jurisdictions can work in partnership to make the justice system work more effectively, for example, a reduction in unproductive court appearances and case delays.

Past Initiatives and Recommendations

"Report of the Review of Large and Complex Criminal Case Procedures" (November 2008), Patrick J. LeSage and Michael Code ("LeSage")
http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/lesage_code/lesage_code_report_en.pdf

Legislative reform to the *Criminal Code*, the *Canada Evidence Act* and the *Youth Criminal Justice Act*, the enactment of the *Canadian Charter of Rights and Freedoms*, and common law alteration of evidentiary requirements via judicial pronouncement have resulted in significant modification of Canadian Criminal Justice, notably increasing complexity and length of trials. Increased complexity has resulted in increased error in statutory interpretation and case law implementation. Increased length of trial has fostered greater animosity between counsel and acrimonious relationships, therein serving to further increase trial time due to out of court acrimony barring compromise requiring in court resolution. Legal Aid through lack of oversight and accountability has lead to increase in frivolous motions and poor issue identification, contributing to increased length of trial. Lack of adequate fee rates coupled with increased trial length has effectively removed experienced counsel from complex criminal cases, placing the administration of complex trials in the hands of inexperienced counsel. Reduction in legal aid availability has witnessed an increase in self represented accused requiring additional case management resulting in increased length of trial.

Five major areas of reform are proposed:

1. Disclosure of the relevant and non-privileged information in the Crown's possession and fostering collaborative relationship between the police and the Crown at the pre-charge stage;
2. Judicial case management, with emphasis on the pre-trial stage;
3. The reevaluation of Legal Aid practices in setting of case budget and increased management and oversight of counsel's conduct during complex trials;
4. Education, guidance and if necessary, discipline of Crown counsel and defence counsel during long complex trials; and
5. Managing the unrepresented accused in long complex trials.

"Report from the FPT Working Group on Criminal Procedure, Proposals for Reform: Mega-trials" (finalized Fall 2007; publicly available Summer 2008)

At their Fall 2007 meeting, FPT Ministers Responsible for Justice endorsed proposals for mega-trial reform brought forward by the FPT Working Group on Criminal Procedure.

Many proposals for mega-trial reform are generally based on recommendations developed by the Steering Committee on Justice Efficiencies (see below) and the FPT Heads of Prosecutions (See below). In particular, the Report suggests the codification of an "exceptional trial procedure" applicable exclusively to mega-trials, which would allow, among other things, for the participation of a management judge separate from the trial judge.

Another proposal recommends that when a mistrial is declared, rulings and orders made by the management judge, as well as submission made by the parties continue to bind the parties in the ensuing new trial. An additional proposal recommends the swearing of up to fourteen jurors for mega-trials to avoid declaration of mistrial due to juror departure.

Proposals to Improve Criminal Law and the Effectiveness of the Criminal Justice System

At their September 2008 meeting, FPT Ministers responsible for Justice endorsed a number of proposals to improve criminal law and the effectiveness of the criminal justice system.

To address the issue of non-returnable warrants and fugitives escaping criminal proceedings in their home jurisdiction by fleeing to another jurisdiction, Ministers endorsed a proposal for a specific Criminal Code offence for failing to remain in a jurisdiction when ordered to do so by the Court.

Ministers also endorsed a range of proposals for criminal procedure reform, including procedures to allow for the greater use of telewarrants, better regulations of agents appearing in the courts, clearer rules concerning electronic disclosure of evidence to the accused, and clarification of the use of expert witness evidence.

"Law Reform Initiatives Relating to the Mega-Trial Phenomenon" (Fall 2007), Professor Michael Code ("Code")

Emergence of 'mega-trials' over the past 10 to 15 years has witnessed inability of such trials to be dealt with effectively and efficiently through traditional criminal law processes. Break down of trial efficiency, pre-trial, during trial and post-trial, serves to diminish public perception of the criminal justice system. It is proposed that the legislature needs to engage in the below cited issues and seek to reduce trial time before "confidence in the administration of justice is serious under-minded".

Based on a review of the January 2004 Report of the Federal, Provincial and Territorial Heads of Prosecutions, the February 2004 Final Report of the Barreau du Québec Ad Hoc Committee on Mega Trials, the 2004 Report on Mega Trials of the Steering Committee on Justice Efficiencies and Access to the Criminal Justice System, the 2005 English Criminal Procedure Rules and Protocol for Long and Complex Trials, and the 2006 Ontario Superior Court Rules, the "Code" Report proposes 3 broad required changes:

- 1. Increase number of 'alternate' empanelled jurors available to replace lost jurors during the course of a trial. This is not a suggestion to alter the minimum required jurors under s.644(2) of the *Criminal Code* noting that this may infringe s.11(f) of the *Charter*, but rather to have 'standby' jurors available to avoid mistrial;
- 2. Improve Case Management through empowerment of the judiciary to intervene at the pre-trial stage. Legislate for two judge involvement at the pre-trial stage to allow for administrative flexibility, and legislate the power to consolidate all common pre-trial ruling in related but severed trials;
- 3. Educate members of the bar on ethical and professional obligations. Suggests statutory pronouncement to clarify ability and procedure for judiciary to intervene and require counsel to 'act responsibly'.

"Report from the Working Group on Collateral Use of Crown Brief Disclosure" (2007)
http://www.ulcc.ca/en/poam2/Collateral_Use_of_Crown_Brief_Disclosure_Rep_En.pdf

The recommendations of the Working Group seek to balance the interests of upholding the integrity of the administration of justice and criminal proceedings with the public interests as they relate to disclosure. Due to the unsettled law relating to disclosure, the Working Group recommends codification of a *Wagg* screening mechanism under civil rules which is to govern production of Crown Brief materials. In order to 'fortify' the integrity of the criminal justice system a presumption of delayed disclosure in concurrent civil proceedings, save special circumstances, is to be adopted. The Report proposes factors to be considered in applying a *Wagg* public interest test to the disclosure of information. The Working Group identified four barriers to achieving uniformity in production of Crown Brief deriving from criminal law, civil law, administrative law and quasi-criminal sources and freedom of information legislation and proposes the 5 following recommendations:

- Undertaking of Confidentiality. Amendment to the *Criminal Code* or Rules of Criminal Practice imposing an undertaking of confidentiality applying to all persons receiving Crown disclosure. Such parties are to have a legal responsibility not to use disclosed materials for an improper or collateral purpose;
- Provincial and territorial unification of the *Wagg* screening process via legislative amendment to rules of civil procedure. The codified *Wagg* rules should contain a presumption of delayed disclosure in collateral proceedings until completion of the criminal proceeding and should apply to provision of Crown Brief regardless of which party is in possession of the Brief;

- Memoranda of Understanding are to be used between key stakeholders (such as the police) and disciplinary tribunals to regulate the sharing of vital information in urgent cases to facilitate the consensual production of Crown Brief materials;
- The provinces and territories should uniformly codify the *Wagg* screening process in the enabling legislation of their child protection agencies and their legislation governing the procedures and processes that apply to administrative tribunals;
- National unification of freedom of information legislation pertaining to access requests for Crown Brief materials, excluding access until prosecution is complete at which time release of information can be assessed on serious policy and public interest concerns addressed in the *Wagg* screening process. The freedom of information legislation should be amended to provide permanent protection to materials subject to litigation privilege.

"Resolutions Adopted at the 101st Annual Conference", Canadian Association of Chiefs of Police (August 2006)
http://www.cacp.ca/media/resolutions/efiles/38/PackageAdopted.pdf

In furtherance of the "FPT Heads of Prosecutions Committee Report of the Working Group on the Prevention of Miscarriages of Justice" (2005), the Canadian Association of Chiefs of Police addressed the integral role of police services in decreasing the potential for miscarriage of justice and wrongful convictions. It is recommended that police forces nation wide examine their policies and practices to ensure they are in line with FPT and other recommendations to eliminate systematic mistakes leading to wrongful conviction.

Additional recommendations addressed:

- Education and training on dangers of tunnel vision in investigations. Crown counsel is to be encouraged to remain open to other theories and mutual independence is to be fostered between the Crown and the police during early collaboration phase. Case review procedures should be implemented in serious crime investigations, with different Crown attorney prosecuting the case then advising police;
- Policies and practices in keeping with research on frailty of eye witness testimony and identification should be implemented and practiced;
- Proliferation of non-returnable warrant should be addressed by the implementation of an effective national transportation system to return accused to jurisdiction and the enactment of an indictable offence for fleeing the jurisdiction with knowledge of a warrant for arrest. It is further recommended that fleeing with knowledge of a warrant is to be considered as a aggravating factor in sentencing;
- To expedite legal proceedings, it is recommended that provision for the scheduling of proven criminal organizations within the *Criminal Code* be enacted; and
- Implementation and continued support of a National Community Safety Action Plan and the National Crime Prevention Strategy.

"Report on Early Case Consideration of the Steering Committee" (Fall 2006)
http://www.justice.gc.ca/eng/esc-cde/ecc-epd.pdf

The Report's 27 recommendations offer practical means of improving the process and relationships in the justice system with the goal of decreasing the number of court appearances necessary to resolve a case. Those recommendations are divided into 6 broad themes:

- Early establishment of a relationship between the police and the prosecutor. The Committee recommends greater involvement by the prosecutor during police investigations. It also recommends that the police forces and prosecution services develop a standard checklist for Crown brief and disclosure packages.
- Police release. The Committee recommends, among other things, that police be better trained and further encouraged to make more use of their powers of release, which should be broadened.
- Bail/Remand. Eleven of the Committee's 27 recommendations aim at improving the conduct of judicial release hearings. Suggested measures include appointing paralegals to assist duty counsel, as well as making the most effective use of weekend courts, prosecutorial discretion for release and technology. The Committee also recommends that consideration be given by the FPT Ad Hoc Subcommittee on Bail Reform to the *repeal of* the reverse onus of proof in cases of administration of justice offences (para. 515(6)(c) of the *Criminal Code*). In addition, the Steering Committee recommends implementing bail supervision programs, communication protocols between the courts and detention centres, and surety approval mechanisms. As to the police, the Committee recommends that the Crown brief be ready in a timely manner and that it be as complement as possible. Furthermore, the disclosure process should be accelerated when a defendant is in custody.
- Early case resolution. The Committee suggests the creation of dedicated case management teams in each Crown Attorney's office. The functions of those teams would include, in particular, ensuring that appropriate disclosure is sent to the defence, taking a position on sentencing and considering the possibility of diversion. The Committee also recommends that judicial pre-trials be held with or without the judge.
- Case management. The Committee recommends that the defendant's first appearance, other than for bail, take place no later than four weeks after the arrest. Issues of disclosure and legal aid should be resolved in order to make the best of the second appearance.
- Diversion. The Committee prefers the use of a wide range of adult diversion programs alternative forms of justice, as well as equal justice initiatives for special-needs defendants (mental disorders, drug and/or alcohol dependencies, etc.). Justice system participants should have training on these programs and initiatives.

"A 30 Year Analysis of Police Service Delivery and Costing"(2005), Aili Malm et al. ("Plecas")

Legislative reform, introduction of the *Canadian Charter of Rights and Freedoms*, and judicial pronouncement expanding common law requirements have produced a cumulative effect resulting in exponential increase in demand on police services over the past 30 years. Such reforms have notably resulted in increased court time, administrative

burden, and understanding and implementation of complicated and unsettled common law pronouncements. Public demand of police service efficiency, coupled with increase in crime and demands on police resources has further strained police forces in Canada. Research reveals that 30 years ago the total time to deal with a break and enter call would range from 334-424 minutes, which has increased to 338-668 currently. Additional increase is seen in response time in domestic assault cases, from thirty minutes thirty years ago to an averaged 200 minutes presently. Similar increase is noted in driving under the influence calls which have witnessed an increase from ninety minutes thirty years ago, to the current 300 minutes.

"Final Report on Mega-trial Reform of the Steering Committee on Justice Efficiencies and Access to the Justice System" (January 2005) ("the Steering Committee"); http://www.justice.gc.ca/eng/esc-cde/mega.pdf

Challenges of mega-trials arise from issues of management and therefore require separate rules and procedures, applicable only to mega-trials, to ensure efficiency. Such "exceptional trial procedures" would place authority with the chief judge, or a designate, to motion parties to hear the case on "exceptional trial procedures", or for defence or prosecution to motion to have the trial heard under "exceptional trial procedures". The exceptionality of a trial would be based on consideration of, number of accused, number of counts, complexity and amount of evidence, investigative methods used, with consideration to availability of resources in the justice system. Such designation of exceptionality would result in the appointment of a 'case management judge', having the same power as a trial judge, in the capacity of shared responsibility.

Recommendations of "Steering Committee" include:

- Appointment of 'case management judge' to mega-trials with same powers as trial judge who could rule on bail applications and conditions, issues of funding, admissibility of evidence, *Charter* considerations and expert status;
- Provide training on case management for judges appointed to mega trials;
- Provision be enacted to codify preliminary motions with same evidence in separate but related files to be heard and ruled on jointly;
- Compensation of defence counsel in mega trial as reflective of extreme cost and resources required;
- Prosecutor to play active role as advisor to investigators;
- Review of number of required jurors to reach unanimous decision;
- Use of electronic disclosure with user friendly search engine linked to trial brief;
- Law Societies to provide counsel with guidance, education and assistance with respect to complex and mega trial procedures and complaints be dealt with promptly;
- That the Court be able to amend a defective direct indictment, pursuant to section 601 of the *Criminal Code*. In these circumstances, the Crown should not be required to obtain and file a new direct indictment;

- Provisions be enacted to codify the substantive or procedural rules governing preliminary motions. It also recommends that the *Criminal Code* describe in more detail the process for filing these motions.

"Report on the Management of Cases Going to Trial of the Steering Committee" (Fall 2005) http://www.justice.gc.ca/eng/esc-cde/eff.pdf

Criminal justice must encompass just and efficient results. In order to achieve this end in light of the increasing complexity of trials there must be effective case management. Effective case management is achieved through 5 guiding principles: cooperation and clear expectations, court leadership, cultivation of case management culture, local commitment to good practice to foster local ownership, and availability of management information.

The Steering Committee makes 4 recommendations:

- Each province and territory should have permanent advisory committees made up of representatives from the bench, Crown, defence and court administration, among others. These committees would be established by the Chief Justice of Chief Judge.
- The role of these committees would be, *inter alia*, to identify the expectations and standards in respect of case management, to recommend local solutions and promote a statement of principles.
- Case management tools, such as control lists and key indicators, should be used.
- Streamlining the process established in the *Criminal Code* should be considered, to facilitate local rule making.

"Recommendations of the F/P/T Heads of Prosecutions, Management of Mega-Trials" (2004)
See also: http://www.scics.gc.ca/cinfo07/830926004_e.html news release on FPT recommendations

In order to increase efficiency and effectiveness of the Criminal Justice system in relation to 'mega-trials' it needs to be acknowledged that "mega investigation result in mega cases". Early Crown involvement and collaboration of all justice participants can serve to diminish complexity of future trial and increase efficiency. The following recommendations are proposed to achieve reduced length of trial and increased justice efficiency in 'mega-trials':

- Early Crown Involvement in Investigation. Crown to provide legal and case management advice while respecting Crown prosecutorial independence and police investigatory independence;
- Provision for single set of rulings on all motions and evidentiary issues that are common for all severed trials where the Crown has severed related counts or related accused into smaller more manageable trials (absent some distinguishing feature);

- Reallocation of resources to different facets of the justice system in recognition of increased demand on resources due to mega trials, including appointment of adequate support staff to deal with logistics of mega trials;
- Judiciary developed rules of court proceeding to deal with mega cases, including bail hearings and *Charter* motions;
- National Judicial Institute, Federal Prosecution Service and the Heads of Prosecution in conjunction with former mega trial justices should compile and disseminate information on judicial best practices gained from previous mega trial experience to increase future efficiency. This could ultimately result in judicial training on management of mega cases, including management of pre-trial and trial procedures, creating and enforcing standards of conduct, and court deadlines, as well as jury management;
- Appointment of judge with adequate experience to manage mega trial or consider appointment of case management judge in addition to a trial judge to mega cases;
- Amend the *Criminal Code* including provision similar to s.536.4 providing for more effective pre-trial conference allowing for proper management of mega cases;
- In the event of mistrial, rulings made at first trial should be binding on subsequent trial, absent material change in circumstance;
- Use of direct indictment should be thoroughly considered when prosecuting mega cases to reduce cost and delay witnessed by preliminary hearing and assisting requirement of hearing within a reasonable time protecting accused s.11(b) *Charter* right;
- Statutorily codify disclosure rules, including electronic disclosure, and provision for the defence to obtain access to or photocopies of non-core material in Crown and/or police possession. Amendment to the *Criminal Code* allowing for electronic disclosure save for in exceptional circumstances;
- Codification of rules applicable to state funded counsel with attention to question of payment for frivolous motions or cross examination and the acknowledgement of requirement for experienced counsel in mega trials;
- Recommended that the automatic 90 day review of detention required under s.525 of the *Criminal Code* be eliminated;
- Enact pre-trial 'case management' provisions granting greater authority to the judiciary allowing for issue identification, imposition of timelines, ruling on or dismissal of motions, and sanction for unprofessional conduct;
- Provision for appointment of an alternate trial judge who could replace the trial judge without delay in proceedings in the event the trial judge had to recuse themselves during proceedings;
- Amend the *Criminal Code* to increase number of empanelled jurors in lengthy trials to avoid declaration of mistrial due to loss of jurors.

The Uniform Law Conference of Canada (ULCC) http://www.ulcc.ca/

The Uniform Law Conference of Canada (ULCC) adopted in recent years a number of resolutions and conference documents suggesting reforms to criminal law which may

assist in reducing delays and costs. For example, the ULCC recommended the following reforms:

- A review of the existing *Criminal Code* provisions relating to restitution for costs incurred by victims of crime as a result of the offence;
- Creation of a provision stating that where a document has been included in the disclosure material provided to the defence, it is deemed that the document has been served and that notice has been given of an intention to introduce the documents into evidence;
- Examining the matter of taking into account the time spent in pre-sentence custody when imposing sentence and the availability of certain sentencing measures such as probation order, conditional sentence, delay of parole and long-term offender;
- Permitting a clerk of the court, in the absence of an order to the contrary, to sign any forms on behalf of an issuing judge;
- Giving superior court judges the jurisdiction to do anything with respect to warrants or warrant-like orders that the *Criminal Code* allows justices of the peace or provincial court judges to do under that Part;
- Providing the Court with the additional jurisdiction to order, after charges are laid, the release and independent testing of any evidence seized by the police during its investigation, consistent with procedural safeguards in section 605;
- That the *Code* be amended to address the public dissemination, on the internet and websites, of the identities, visual representation, addresses of home, business, school, or of any similar information, of justice system participants, journalists and/or their families when the intent is to provoke a state of fear;
- Expanding the availability of telewarrants;
- Studying the issue of access to justice including the possibility of providing a statutory power allowing trial judges to assign counsel to persons charged with criminal offences;
- Re-codification of the General Part of the *Criminal Code*;
- Amending the *Code* to require that sentences state that actual time spent on remand, plus the time credited for remand which has been given in arriving at the sentence imposed.

"Final Report of the Ad Hoc Committee on Mega-trials of the Criminal Law Committee", Barreau du Québec (February 2004) [Available in French Only]

The Ad Hoc Committee on Mega-trials of the Criminal Law Committee was mandated to identify issues and potential solutions to increase efficiency reagarding increasingly prevalent mega-trials. Issues relating to mega-trials indentified by the Ad Hoc Committee included exceptional cost, unnecessary length, and if not managed properly, risk of decreasing public confidence in the administration of justice.

Based on the issues identified, the Committee proposed the following recommendations:

- Resources should be allocated to different facets of the criminal justice system reflective of the elevated costs of mega-trial;

- Legal Aid should be re-considered with fee compensation representative of the elevated demands in mega-trials;
- Re-evaluation of remuneration of juror to reflect costs of being a juror particularly in lengthy trials;
- Recommends against the creation of special courts for the purposes of mega trials as running contrary to the accused right to elect to be tried by judge or jury;
- Increase the number of empanelled jurors from 12 to 14 to compensate for juror loss during mega-trials;
- Recommends against imposing an arbitrary limit on number of accused per process or number of charges. Ultimate discretion of appropriate number of accused and offences per hearing should be left to the determination of the judge. Consideration is to be given to the nature of the criminal activity, the evidence available, and the public interest;
- Crown counsel should be implicated in the process at the earliest possible stage to provide legal advice during the investigatory stage. Early Crown involvement will ultimately facilitate timely and informed disclosure due to familiarity and presence in the process;
- Mega-trial judge must implicate himself in the proceedings early and consistently;
- More efficient use of pre-trial conference in which all scheduling, evidentiary consideration, respectable behavior and guidelines of the process, and decision regarding limiting of accused or offences are addressed;
- Appointment of a supplementary judge who will maintain familiarity with the proceedings in the event that the trial judge has to recuse themselves, ensuring continuity of proceedings and reduced cost of recommencing trial;
- Appointment of a mediator judge who could hear issues (except evidentiary matters) and assist defence and Crown counsel in arriving at agreements on contested issues;
- Education initiatives for judges and lawyers of trial management and personal stress management of mega-trials;
- Management of the media in mega-trials to ensure transparency of process with consideration to interests of the accused.

"Report of Minister's Roundtable on Criminal Law" (November 2002) Department of Justice Canada http://www.justice.gc.ca/eng/cons/rt-tr/nov102/toc-tdm.html

In 2002 the Minister of Justice organized discussions with 26 criminal lawyers and academics from across Canada to address issues in the Canadian criminal justice system. The Roundtable highlighted numerous areas of concern, notably including, mandatory minimum sentences, inadequacy of legal aid funding, overrepresentation of Aboriginals in the criminal justice system, wrongful convictions, and the desire to increase restorative justice efforts. The inappropriateness of enacting new *Criminal Code* provisions in response to political and social pressures was raised. The proliferation of criminal offences has led to a complex and disorganized *Criminal Code* resulting in confusion in application. Participants advocated for restraint to be exercised in the enactment of new provisions, with *Criminal Code* provisions being limited to criminal behavior, and addressed the need for reform and reorganization of the *Code*. Such reform must involve

all players in the criminal justice system, including consultation with the public in recognition of Canada's changing demographic. Reform objectives are to be realistic with consideration to administrative and financial capacity available to achieve the objectives.

"Disclosure Reform Consultation Paper" (2004) Department of Justice
http://www.justice.gc.ca/eng/cons/ref/ref.pdf

Consultation with a representative group of participants in the criminal justice system resulted in the identification of 5 major areas requiring reform concerning disclosure practices in Canada.

The five areas of proposed reforms include:

- Facilitating Electronic Disclosure. Legislative amendment allowing for electronic disclosure except in exceptional circumstances;
- Access to Disclosure Materials. Due to the increased volume of information required for disclosure there has been an increased burden on the police and Crown to provide relevant documentation. It is proposed that legislative amendment could deem Crown obligation to disclose be fulfilled if the defence is provided with reasonable access to materials and permitted to make copies in appropriate circumstances;
- Specialized Court Proceedings on Disclosure. In order to avoid unnecessary delay, it is proposed that legislative amendment could allow for specialized court proceedings to resolve matters related to disclosure, including relevance, privilege and form of disclosure;
- A collaborative undertaking to establish detailed disclosure management procedures be initiated;
- Legislative amendment to prohibit misuse of disclosure information, particularly for the purpose of intimidation or furthering criminal activity.

"FPT Heads of Prosecutions Committee Report of the Working Group on the Prevention of Miscarriages of Justice: Summary of Recommendations" (January 2005)
http://law.du.edu/documents/cle/role-of-the-prosecution-summary.pdf

The Working Group proposed 9 areas of concern contributing to the potential for miscarriage of justice and wrongful conviction, namely, tunnel vision, eyewitness identification and testimony, false confessions, in-custody informers, DNA evidence, forensic evidence and expert testimony, education, police notebooks/Crown files/trial exhibits, and ineffective assistance of counsel. Specific recommendations are presented for each sub-category to increase the integrity of the criminal justice system, and reduce the prevalence of miscarriage of justice through wrongful conviction.

British Columbia

"Addressing Inefficiencies in the Criminal Justice Process: A Preliminary Review" (September 2008), Yvon Dandurand

The "Preliminary Review" seeks to identify issues contributing to criminal justice inefficiency, and to identify successful practices and reform initiatives implemented to improve the efficiency of the criminal justice process. Symptoms of inefficiency include, delays, unnecessary adjournments, ineffective hearings, increased length of criminal trial process, and ineffective trials. Initiatives nationally and internationally which have achieved the greatest success implement a 'holistic approach' to criminal justice efficiency reform, recognizing the interdependent nature of the criminal justice system. Effective reform requires clearly defined goals and standards, delineation of respective group responsibility in reform implementation, accountability mechanisms and feedback provided to participants on success of change being effected.

The "Preliminary Review" speaks to the following areas and proposes recommendations based on a national and international survey of reform initiatives pertaining to:

- Improved Court Administration;
- Improved Case Management. Including differentiated case management, judicial management and leadership, case preparation, redefinition of prosecutorial role, collaboration between different stakeholders, and technological support;
- Improved criminal investigation and communications between the police and the prosecutors;
- Encouraged diversion and early disposition of cases. Consideration to be given to availability of legal aid, improved early and ongoing communication between defence and the prosecution, and improved prosecutorial discretion;
- Re-evaluation and better use of the pre-trial process. Including improved disclosure processes, plea negotiation processes, and preliminary inquiries and case conferences;
- Focus on the trial and the sentencing process. Consideration to be given to the creation of 'problem solving courts', and increased availability of pre-sentence reports;
- Performance Indicators and Feedback loops.

"Assessing Sentencing across Criminal Careers: *An Examination of VPD's Chronic Offenders*" (2008), Vancouver Police Department

The sentencing patterns of a random sample of chronic offenders known to the Vancouver Police Department were analyzed under the Chronic Offender Program. Contrary to public perception, sentences accorded to repeat offenders decrease, rather than increase in length after the 30th conviction. In order to ensure public protection from chronic offenders and increase the likelihood of offender rehabilitation, current sentencing practices for chronic offenders need to be re-evaluated wherein sentence imposed reflect harm done. The following recommendations were proposed:

- Sentences for chronic offenders (convicted of 30 or more offences) should be sufficient to protect the public and encourage offender behavioral change;
- The Chronic Offender Program should be utilized to track chronic offenders and monitor compliance with court-imposed orders and restrictions. Such monitoring will allow for increased speed of re-arrest for subsequent offences, increased

ability to advocate for remand to custody when charged and appropriate sentence when convicted, and increased information to the court specific to identified Chronic Offenders;

- In order to achieve recommendations there must be, complete information transfer between police and Crown, support for requests for more prosecutors for bail hearings, support for Crown in proceeding by way of indictment for hybrid offences, encouraged use of the appeal process for sentences when appropriate, encouraged use of sentencing guidelines that emphasize protection of the public, and support of increased capacity to deliver mandatory programs and treatment for offenders.

"A Guide to Arraignment, Compliance and Administrative Court"; "Criminal Process Front-End Reforms"

Reform pilot projects to decrease delay and increase trial efficiency have been implemented in Victoria, Kelowna, Port Coquitlam and Prince George, with hopes of additional implementation in Main Street criminal courts in Vancouver.

The reform initiatives seek to change the manner of arraignment for criminal charges and implements 2 special Provincial Court sittings, namely, an "Administrative Court" to deal promptly and efficiently with matter of Court Order breaches, and a "Compliance Court" to deal with failure to comply with *Criminal Caseflow Management Rules*. Additionally, Judicial Case Managers are granted authority to rule in the pre-trial stage to ensure case progression in a timely manner. A trial Confirmation Hearing is conducted by the Judicial Case Manager prior to trial in order to ensure that all parties are prepared to proceed and engage in a meaningful court process. Issues which cannot be resolved by the Judicial Case Manager are referred to the 'Administrative Court' for ruling.

"Criminal Justice Reform Secretariat" (formed 2007) http://www.ag.gov.bc.ca/justice-reform-initiatives/criminal/index.htm

The Ministry of Public Safety and Solicitor General and Ministry of Children and Family Development created the Criminal Justice Reform Secretariat in 2007. The Secretariat was charged with developing and implementing "provincial crime reduction and prevention strategies". The Reform Secretariat utilized a problem solving approach to strategy development, focusing on collaboration and integration of all players in the criminal justice system, with effective case management as a means to hold offenders accountable in a more timely and efficient manner.

"Report on Backlog in Vancouver Adult Criminal Court" (January 2005), Main Street Criminal Procedure Committee Backlog Reduction Initiative. http://www.llbc.leg.bc.ca/public/PubDocs/bcdocs/375537/CommitteeReportonBacklog.pdf

The Main Street Criminal Procedure Committee was established in February 2004 to address the issue of trial delay experienced in the Vancouver Adult Criminal Court. Although 6 months was set as the level of reasonableness, scheduling of half day trials were delayed 12 months. Based on the following recommendations delays have been reduced by 7 months.

- Ensure optimum utilization of court room facility and consider the construction of a multi-jurisdictional facility to adequately meet court facility needs of adult criminal cases;
- Ensure sufficient judicial resources are available and being utilized optimally. This requires sufficient resident judges being allocated to the Court and visiting judges scheduled on a consistent basis;
- Ensure adherence to Criminal Caseflow Management Rules;
- Ensure that an optimum caseload is set for each trial list based on existing Crown resources by the judicial case managers that adequately reflect trial collapse rates;
- Continued promotion of Crown ownership and ability for prosecutors to prepare as early in the process as possible;
- Continued use of pre-trial case management of long trials;
- Ensure communication between counsel and judicial case managers regarding trial date collapse;
- Continued encouragement of consent releases before Court Services Justices of the Peace, where appropriate.

"Criminal Caseflow Management Rules", Provincial Court of British Columbia
http://provincialcourt.bc.ca/aboutthecourt/criminalandyouthmatters/criminalcaseflowmanagementrules/index.html

Alberta

"Achieving Justice" (January 2008), Alberta Justice Policy Secretariat
http://www.justice.gov.ab.ca/downloads/documentloader.aspx?id=48586

"Achieving Justice" is a provincial policy initiative which provides a manner through which to ascertain what Albertans desire from the justice system and how better to implement highlighted considerations. The initiative's mission focuses on safe communities, access to justice, respect for the law, understanding of and confidence in the justice system, and implementation of a legal foundation for social cohesion. The enumerated guiding principles to achieve the mission consist of public service accountability, improved justice system accessibility, improved justice effectiveness, integrity, collaboration of all justice system participants, and excellent quality of service.

Project Charter; Court Case Management Program (December 2008)
http://www.albertacourts.ab.ca/ProvincialCourt/CourtCaseManagement/tabid/331/Default.aspx

The Court Case Management project seeks to "make more efficient and effective use of limited Court Services, Crown, Defence Counsel and Provincial Court time and resources". In order to achieve this end, the following are recommended:

- Modification of scheduling system which utilizes only necessary resources;
- Schedule court time with judges relating to meaningful activities, while reserving administrative matters for justices of the peace;
- Implement an electronic court booking system;
- Distribution of files to Crown prosecutors based on volume and capacity;
- Allow Crown prosecutors flexibility in scheduling court time to promote file ownership;
- Reduction in the administrative functions required by Crown prosecutors; and
- Facilitate the resolution of files at the earliest stage possible in the court process.

"Issues with Bail in Canada" (January 2009), Chief Boyd (Edmonton Police Service)

Dangerous repeat offenders' failure to comply with court orders further taxes already extended police service resources. Unreasonable low pre-trial release amounts and poorly funded provincial monitoring systems provide little deterrence resulting in breach of release conditions. It is proposed that where offenders do not adhere to conditions of release, sanctions must be imposed to protect society from re-offending and to preserve public confidence in the justice system. Offending in multiple jurisdictions by repeat offenders can lead to 'fragmentation' of proceedings, and may result in 'undercharging' of offenders, as not representative of the cumulative effective of all offending and the magnitude of offending on the public.

In order to avoid 'fragmentation' and 'undercharging' of repeat offenders, Crown prosecutors and police services need to collaborate to gather evidence and more effectively advocate for pre-trial detention or specific condition of release. Public protection should be at the forefront of all determinations concerning judicial interim release.

"Trial Readiness: Discussion Paper"(October 2006), Management and Leadership Services, Alberta Justice

Trial collapse was identified as a leading factor in trial delay and an impediment to trial within a reasonable time. It is estimated that between 60-80% of files collapse on a given trial day in Calgary and Edmonton courts. Observational review was used in order to ascertain the factors contributing to trial collapse. The following factors were revealed as the primary reasons for trial collapse:

- Last minute guilty pleas or guilty pleas to lesser offences;
- Witnesses not appearing;
- Defence adjournments;
- Bench Warrants; and
- Over-booking Courtrooms.

The Alberta Early Case Resolution Practice Note was implemented on March 1, 2002 in the Provincial Court of Alberta to address issues to be resolved at the earliest stage in proceedings to avoid unnecessary costs and inconvenience. Questionnaires returned from Crown counsel indentified short comings in the Early Case Resolution Practices as residing in no incentive for guilty pleas, less effective in regional areas due to Crown or Defence counsel not being present to meet face to face, and no specialized Early Case Resolution units to review cases, meet with defence counsel and prepare offer letters.

Alberta Summit on Justice (1999) http://www.justice.gov.ab.ca/publications/justicesummit/rec/final.htm#10 Report Card (2000) http://www.justice.gov.ab.ca/publications/ReportCard/intro.htm

Discussion groups focusing on Barriers to Accessing Justice, Victim Rights and Involvement in the Justice System, Youth and the Justice System, Police, First Nations, Métis and Inuit Justice, Crime Prevention, Alternative to Existing Justice System Processes, Public Confidence in the Justice System, and Increased Access to Legal Aid, resulted in 519 individual reform recommendations.

Of the 519 individual recommendations, 8 themes were derived consisting of:

- Improved Public Knowledge, Education and Awareness;
- Simplification of the Justice System;
- Increased Sensitivity and Cultural Awareness;
- Enhanced Community Partnerships;
- Clarified Accountability;
- Action on Previous Studies and Reports on Justice; and
- Increased Funding.

Saskatchewan

"Milgaard Report" Wrongful Convictions http://www.milgaardinquiry.ca/DMfinal.shtml

Recommendations of the committee revealed that the convictions review system in Canada was premised on the fallacious belief that wrongful convictions in Canada are an exception to the rule. In order to decrease the likelihood of wrongful convictions it is the responsibility of all facets of the criminal justice system to alter the above presumption and detect and correct their own errors.

"Commission on First Nations and Métis Peoples and Justice Reform" (2002) http://www.justicereformcomm.sk.ca/volume1.gov

The Commission of First Nations and Métis Peoples and Justice Reform was commissioned in November 2002 to consider all areas of the criminal justice system as it relates to First Nations and Métis Peoples. The Commission engaged in a holistic

approach resulting in the identification of 8 areas of consideration. Specific recommendations as they relate to criminal justice reform addressed:

- Restorative Justice;
- Educational initiatives;
- Development of meaningful sentencing alternatives;
- Introduction of Aboriginal language into the Courts;
- Use of community based sentences;
- Creation of mobile Therapeutic Court; and
- Additional funding to Legal Aid.

Manitoba

"Pre-Trial Coordination Protocol: Adult Charges" (February 2008) http://www.manitobacourts.mb.ca/pdf/pre-tial_coordination_protocol.pdf

The Pre-trial protocol is applicable to all adult criminal prosecutions in the Provincial Court (Winnipeg Centre) and is in place to ensure meaningful court appearances. This is achieved through the appointment of a 'pre-trial coordinator' who ensures, the accused has been informed of right to counsel, sufficient disclosure has taken place to enter a plea, bail variance issues have been addressed, the Crown has reviewed the evidence, meaningful discussion between counsel have occurred, counseling or diversion issues have been addressed, a pre-plea comprehension inquiry has been conducted, and the 'Certificate of Trial Readiness' has been completed. In order to further increase efficiency and reduce delay, administrative time lines have been created, and specific resources and protocol are in place to deal with the unrepresented accused.

"Community Justice Program" http://www.gov.mb.ca/justice/criminal/communityjustice.html

The "Community Justice Program" focuses on restorative justice practices, decreasing the burden on criminal courts by diverting appropriate cases to a restorative out of court justice program, while increasing accountability of offenders to victims and chance for rehabilitation.

"Report of the Aboriginal Justice Inquiry of Manitoba" (November 1999) Aboriginal Justice Implementation Commission http://www.ajic.mb.ca/volume.html

Ontario

"New Approaches to Criminal Trials: The Report of the Chief Justice's Advisory Committee on Criminal Trials in the Ontario Superior Court of Justice" (May 2006) http://www.ontariocourts.on.ca/scj/en/reports/ctr/index.htm

The Committee conducted an in depth analysis identifying factors contributing to increased length of trials and inefficiencies in current court processes proposing an

exhaustive list of concise recommendations to address the identified issues. No one facet of the criminal justice system is responsible for increased length of trial, but rather responsibility is shared by Parliament, the judiciary, prosecutors, defence counsel, police and the accused. Major reform to the pre-trial system and effective case management is proposed as a necessary foundation to achieve more efficient and reduced length trials, while not compromising the interests of the accused or the prosecution. It is contended that recommendations from various justice efficiencies reports from numerous sources have not been implemented. Adherence to recommendations of previous reports, as well as cultural attitude change are necessary to effect meaningful change and increased efficiency.

Specific recommendations to the following were proposed:

- Legal Aid;
- Pre-Trial Conferences;
- Appointment of Case Management Judge / Trial Management;
- Trial Scheduling;
- Pre-Trial Applications;
- Jurors;
- Interpreters;
- Technology in the Courtroom;
- Courtroom Personnel and Facilities;
- Correctional Services and Prisoner Transportation; and
- Police Services.

"Justice on Target" http://www.ontario.ca/justiceontarget

Justice on Target represents a provincial initiative to reduce delays currently experienced in criminal courts in Ontario. Over the past 17years required average court appearances to bring a charge to completion rose from 4.3 to 9.2 appearances, with the time required to complete a charge increasing from 115 to 205 days. The province of Ontario is seeking to reduce the number of average appearances and time required by 30% over the next 4 years. This is to be achieved through engaging the Judiciary, the Criminal Defence bar, Crown Prosecutors and the police, developing and implementing new initiatives, and through supporting change in local courthouses.

In order to achieve provincial targets Dedicated Prosecution and On-Site Legal Aid have been implemented. Dedicated Prosecution ensures early case management, increasing efficiency and consistency thereby reducing time. Legal Aid Ontario, in conjunction with the province, is to increase on-site legal aid services from the current 9 criminal court locations to a total of 26, facilitating the appointment of a lawyer thereby reducing the number of required appearances. Applications for legal aid are to be made available online to facilitate application procedure and time of response.

"Exit Point Taskforce"

In order to keep violent repeat offenders off Ontario streets, the "Exit Point Taskforce" is focusing on the main "exit points" of the justice system, namely, bail, sentencing and post-sentence, to propose reform recommendations.

"Up Front Justice Project"

The "Up Front Justice Project", led by the Ministry of the Attorney General, comprises a number of initiatives in selected courts to make the early stages of the criminal process more effective. It includes early Crown legal advice to Police Services, extra personnel at the bail stage to ensure matters are ready for a bail decision, to assist in the identification of sureties and to ensure the needed information is available for the judicial officer. It also includes training for Justice of the Peace on managing the bail process.

Québec

"Facilitation Conference in Criminal and Penal Matters" Court of Québec
http://www.tribunaux.qc.ca/mjq_en/c-quebec/Modes_alternatifs_de_reglement_anglais/fs_CRAcriminel_FonctionnementAng.html

The objective of a Facilitation Conference is to resolve specific legal issues in the best interests of the involved parties in a non-adversarial manner. An application for a Facilitation Conference can be brought at any time during the judicial process jointly by the prosecution and the defence.

Should a Facilitation Conference result in a solution on at least one issue, the agreement is signed by all parties and attorneys and submitted to the court. If the Facilitation Conference does not lead to a resolution, then the facilitating judge cannot rule on the trial. An undertaking of confidentiality, respecting the confidentiality of all information disclosed during the conferences is of paramount importance.

"Increased Access to Legal Aid" (2006) Justice Québec
http://www.justice.gouv.qc.ca/english/ministere/dossiers/aide/aide-a.htm

The Government of Québec revised and increased the eligibility level for legal aid in order to facilitate access to justice. The increase provides additional assistance to single persons, families (with or without children), certain categories of elderly persons, and low income workers.

"Victims of Criminal Acts"
http://www.justice.gouv.qc.ca/english/publications/generale/proc-peines-a.htm

"Victims of Criminal Acts" is a resource which provides information on trial procedures and expectation management of victims of crime. Resource links for victims groups and additional information are provided.

"Witnesses Role in Court: Your Role in Criminal Court"
http://www.justice.gouv.qc.ca/english/publications/generale/temoins-a.htm

"Witnesses Role in Court: Your Role in Criminal Court" is a brochure available for witnesses explaining the criminal court process as well as roles and responsibilities of a witness prior and during testimony in a criminal proceeding.

"Program to Deal Non-Judicially with Certain Criminal Offences Committed by Adults"
http://www.justice.gouv.qc.ca/english/publications/generale/non-judic-a.htm

Election to deal with a matter non-judicially is a matter of prosecutorial discretion. Such discretion can only be exercised for permissible offences and for offenders who do not have significant criminal histories. Consideration is also to be given to degree of premeditation, subjective seriousness of crime, risk of re-offending, and the need to deter the specific offence. The 'non-judicial' interventions consist of a warning letter, demand and alternative measures. Alternative measures require the offender to compensate the victim, engage in community service or attend training session to sensitize the offender to the consequences of their actions.

Nova Scotia

"Self-Represented Litigants in Nova Scotia: Needs Assessment Study" (March 2004)
http://gov.ns.ca/just/srl/_docs/SRL%20Report%20March%202004.pdf

Self-Represented Litigants (SRLs), frequently present in criminal matters, place a significant burden on court resources and daily proceedings. SRLs do not possess the necessary information or resources to adequately navigate the justice system, particularly concerning matters of evidence. Of the SRLs 34% indicated that could not afford a lawyer, 26% indicated they were denied legal aid, 40% indicated they did not need or want a lawyer's assistance.

The project produced 20 recommendations to assist the SRL and reduce administrative inefficiency. The recommendations as they relate to criminal law include:

- Develop processes and tools to assist staff and self-represented litigants at the pre-filing stages of the court process;
- Develop court staff guidelines to increase the consistency of answers from staff to litigants across the province. Differentiate between requests for legal information and legal advice;
- Implement continuing education for court staff so that accurate information will be presented to the self-represented litigant;
- Compile a list of useful web-related information on court processes and services and make it available in print form at court sites. Plain language and user friendly formats are to be used;

- Develop information guides concerning, court fees, court room preparations (using exhibits, how to get disclosure, serving subpoenas, dealing with witnesses, requesting adjournments), enforcing court orders and appealing court decisions;
- Develop programs that assist self-represented litigants in document and court preparation in collaboration with the Nova Scotia Barristers' Society and other legal services or information providers including Legal Information Society Nova Scotia, libraries, Transition Houses and Community Centers;
- Collaborate with the Bar and Bench to develop a program to deliver court preparative advice/information from lawyers or paralegals in high self-represented litigant volume courts. Support efforts to make legal advice available to (otherwise) self-represented litigants through *pro bono* initiatives.

Newfoundland

"Newfoundland Labrador's Report of the Task Force on Criminal Justice Effectiveness" (February 2008) http://www.justice.gov.nl.ca/just/publications/Report%20on%20Criminal%20Justice%20Efficiencies.pdf

In 2007 the *Task Force on Efficiencies in the Criminal Justice System* was mandated to examine current functioning and propose solutions to increase justice system efficiency without compromising principles of fundamental justice. Examination of current practices revealed that length of time from first appearance to conclusion of trial could be reduced by roughly 1/3 based on implementation of the following recommendations:

- Accused should be released by police to appear in court 2 weeks after arrest instead of current 6-8 week time delay;
- Concise and specific legal aid information should be provided with prompt appointment of counsel for those eligible;
- Disclosure of information should be conducted in a timely and comprehensive manner;
- Crown Attorneys should be involved to assess viability of conviction in pre-charge stage;
- Crown Attorneys should inform defence of intention regarding election of hybrid offences and penalty sought at early stage of the process. Best offer in return for guilty plea should also be presented as early as reasonable in the criminal process;
- Scheduling delays and unnecessary appearances should be minimized via centralized electronic scheduling, electronic case assignment system, appointment of per diem short notice judge, and monitoring of trial readiness by court administrators;
- Recognition of importance of judicial leadership for effective Case Flow Management and the requirement of support of all players and adequate resource allocation to effect change and increase efficiency.

"Case Flow Management Committee of the Provincial Court" (2004); Implemented to reduce delay. http://www.court.nl.ca/provincial/ar03_04.pdf