
**Review of the Provincial Justice System in
British Columbia**

**Internal Audit & Advisory Services
Ministry of Finance**

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Abbreviations

ADAG	Assistant Deputy Attorney General
CJB	Criminal Justice Branch
CJEC	Criminal Justice Executive Committee
CSB	Court Services Branch
CSR	Corporate Services Review
FJSD	Family Justice Service Division
FTE	Full Time Equivalent
IAAS	Internal Audit & Advisory Services
IT	Information Technology
JSB	Justice Services Branch
LSS	Legal Services Society
MAG	Ministry of Attorney General
MSB	Management Services Branch
PPS	Provincial Police Service
PSSG	Ministry of Public Safety and Solicitor General
RCC	Report to Crown Counsel
RCMP	Royal Canadian Mounted Police

Executive Summary

The provincial justice system in British Columbia consists of the police, Crown Counsel, the judiciary, court services and prisons. The justice system is a foundation of our society and plays an important part in maintaining a just, peaceful and safe society by maintaining public safety, enforcing laws and protecting people's rights. Consequently, strong public confidence in the system is of utmost importance.

While crime severity and crime rates have decreased over the last several years, it is unclear why the number of cases and pressures on the justice system has continued to increase. The lack of a suitable performance management framework makes it impossible to clearly understand the underlying causes.

Demand for justice services has seen a steady increase and the system is facing cost pressures as a result. The justice sector is also facing significant systemic challenges including the increasing complexity of crime and in managing the legal system itself. Organized crime has expanded, and both trafficking in persons and domestic violence require increasingly specialized responses. Further, the system faces a significant challenge in dealing with the independence requirements of police, Crown Counsel and the judiciary and the resultant financial and operational impacts. As a result, there have been increases in the time it takes to get to trial, the length of trials and in the number of cases being stayed.

A number of justice reform initiatives intended to reduce operational costs have been implemented over the past few years. As well, discretionary spending has been tightly controlled. However, continued efforts are needed to increase efficiency and effectiveness across the system. As such, Internal Audit & Advisory Services was requested by a Deputy Ministers' Steering Committee to conduct a broad review of the Ministry of Attorney General and the Ministry of Public Safety and Solicitor General in order to identify opportunities that may strengthen the justice system in British Columbia.

Based on the review, it is clear that an overall justice system perspective is lacking; instead, it is largely a fragmented approach with each branch of the two ministries planning, forecasting and operating independently. Further, the delivery of justice supersedes a focus on cost consciousness across parts of the system.

The ministries are unable to effectively present and support their resourcing challenges and needs in a system-wide integrated manner. Joint budget requests are not prepared and changes in priorities within the justice system do not consider impacts on all parts of the system.

Foundation pieces supporting a system-wide approach are in place; however, they are not used consistently across the system. Steps should be taken to build on this strong foundation which includes:

- the Criminal Justice Executive Committee, a group of executives representing the justice system across government;
- the Justice System Indicator Report upon which a series of detailed performance measures may be drawn from and implemented;
- a Simulation Model with the potential to identify impacts and opportunities across the system thereby improving forecasting and planning; and
- Justice Reform and Transformation, a series of initiatives underway designed to maximize resources.

During our review, the ministries were developing plans to implement a Justice Business Intelligence Program to help the justice system become more strategically aligned and eliminate the silos. Some of the information needed to implement this program is already available within the various branches but needs to be used across the sector to enhance the effective use of the system's resources.

The review included an assessment of the following areas within both ministries.

Accountability
and Decision
Making

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

The corporate financial framework is weakened by the decentralized corporate services model in place within both ministries; this impacts on data quality and measurability and operational information is not viewed through a system-wide lens. Consideration should be given to the consolidation of corporate services in order to achieve greater efficiency and effectiveness across the justice system.

Independence of the police, Crown Counsel and judiciary has a significant impact on the effective and efficient use of justice system resources, and there is a need to achieve a balance between independence and accountability for costs.

Linkages and
Coordination

There have been a number of justice reform initiatives over the past 10 years where branches in the Ministry of Attorney General and Ministry of Public Safety and Solicitor General have collaborated; however, neither the ministries nor individual branches are well integrated, and there is a lack of coordination between financial and operational data. Key stakeholders across the system do not interact strategically as a system and instead operate largely independently of each other, which impacts on resource sharing and resource maximization.

Workload and
Cost Drivers

Workloads and their associated costs are driven primarily by factors beyond the control of the ministries (e.g., number of crimes committed, the number of Reports to Crown Counsel). Each branch is a workload driver for another branch, but opportunities are not taken on a consistent basis to share information and coordinate activities to maximize resources and contain costs.

Due to the lack of a suitable performance management framework, it is unclear how much of the pressure on the justice system is due to growing case complexity and number of cases versus inefficiencies within the system itself.

Performance
Management

Performance management is inconsistent and is not integrated across the justice system. Formal performance measures and targets are not in place across all areas of the sector to drive results and assist with strategic planning and financial monitoring. Performance measures in one branch are not used to drive performance measures in other branches in a coordinated, deliberate manner, and results are not consistently assessed. Anecdotal information is used by management in some instances, but it is not reliable or robust enough to enable good decision-making.

Operational and
Financial
Controls

Operational and financial controls are largely effective and discretionary spending is tightly controlled by both ministries. Particular attention is paid to controlling salary costs in order to manage the annual budget, and the cost of large contracts such as the Provincial Police Service, are closely monitored. A number of cost containment strategies are in place although business cases and assessments are not consistently conducted.

Cost Analysis

The ministries are not well integrated financially. There is a lack of coordination between branches and accountability for financial results is dispersed across the branches. Financial information lacks rigor and decision making is impacted. Because the branches tend to operate in silos, the coordination and sharing of resources is limited.

We would like to thank the management and staff of the Ministry of Attorney General and the Ministry of Public Safety and Solicitor General who participated and contributed to this review for their cooperation and assistance.



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September, 2011

Introduction

The provincial justice system in British Columbia is jointly administered by the Ministry of Attorney General (MAG) and the Ministry of Public Safety and Solicitor General (PSSG). MAG is responsible for law reform, for the administration of justice and for seeing that public affairs are administered in accordance with the law, while PSSG works to maintain and enhance public safety in every community across the province. Combined, the ministries are responsible for the provision of an effective and efficient justice system, including:

- police services;
- prosecutorial services;
- court services, including family, civil and criminal courts;
- the funding of the judiciary; and
- corrections services.

The justice system has faced increasing demands and related costs resulting in increases in the time a case takes to get to trial, growing number of cases being stayed and unscheduled courtroom closures due to lack of availability of sheriffs and/or court clerks.

Further, the size of the judiciary has been a concern in that the number of judge sitting hours may not adequately ensure timely access to justice.

In addition, the justice sector is facing significant systemic challenges which serve to drive up costs. As examples, the complexity of crime continues to increase, along with increasing complexity in the legal system and in managing offenders. Organized crime has expanded, and both trafficking in persons and domestic violence require increasingly specialized responses.

In order to respond to accelerating demand, delays and resource shortfalls, the ministries continue to rethink and reshape the delivery of justice services. A key goal is to enhance efficiencies and reduce costs by reducing the volume of cases going into the courts, and for more than a decade MAG has devised and implemented a number of justice reform initiatives. Likewise PSSG has implemented a number of initiatives intended to reduce operational costs and eliminate discretionary spending, including risk-based approaches to treating offenders and those under bail supervision and streamlining of services such as health care, food and community corrections.

As a result of the increasing pressures on the system, Internal Audit & Advisory Services (IAAS) was requested to conduct a broad review of the Ministries of AG and PSSG.

Purpose and Objectives

The purpose of this engagement was to provide a financial and resource management review of MAG and PSSG, as well as to identify other areas of concern during the review. Specific engagement objectives included:

- review of operational information on the management of all branch resources, including the primary demand drivers, case management, performance measures, statutory framework and operational controls that ensure effective utilization of resources; and
- review of financial information on the cost factors of justice system programs, including cost drivers, cost allocation and financial controls that ensure effective utilization of financial resources.

Approach

IAAS conducted a broad review of branches within the ministries of Attorney General and Public Safety and Solicitor General. The Deputy Ministers' Steering Committee was regularly provided with detailed information and areas of concern identified by IAAS during the project. The committee members also identified specific areas of concern for IAAS to review. The approach included:

- conducting interviews with key management and staff across the ministries;
- reviewing and analyzing legislation, program policies and procedures;
- reviewing and analyzing financial reports and variance reports; and
- reviewing and analyzing key operational and program documentation.

The Justice System

In British Columbia, the provincial justice system is jointly administered by two ministries, MAG and PSSG. Policing and Corrections Services are administered by PSSG while Crown Counsel, Judiciary and Court Services are administered by MAG.

The following are key components of the justice system:

The **Civil Justice System** helps private parties solve legal problems and disputes such as negligence or personal injury, small claims, commercial and corporate disputes and enforcement of rights.

The **Family Justice System** helps private parties solve legal problems and disputes such as divorce and matters affecting children.

The focus of this review was the **Criminal Justice System** which receives the majority of resources and works to stop crime from happening and to address it quickly when it does occur; it brings offenders to justice with resolutions focused on reducing and addressing the causes of crime. The major components of the criminal justice system are: police, prosecution, defence counsel, legal aid, courts, judiciary and corrections.

Police investigate crimes and, if warranted, recommend charges. These recommendations are then provided to Crown Counsel who determine whether or not to approve the charges and prosecute the offenders. Once charges are approved, court hearings are scheduled by the judiciary to try the cases. Court Services Branch (CSB) is responsible for operating court registries, and providing court space, services and staff. Depending on the decisions reached in court, corrections may have to provide supervision over offenders, or take offenders into custody. A system flowchart is shown in Figure A:

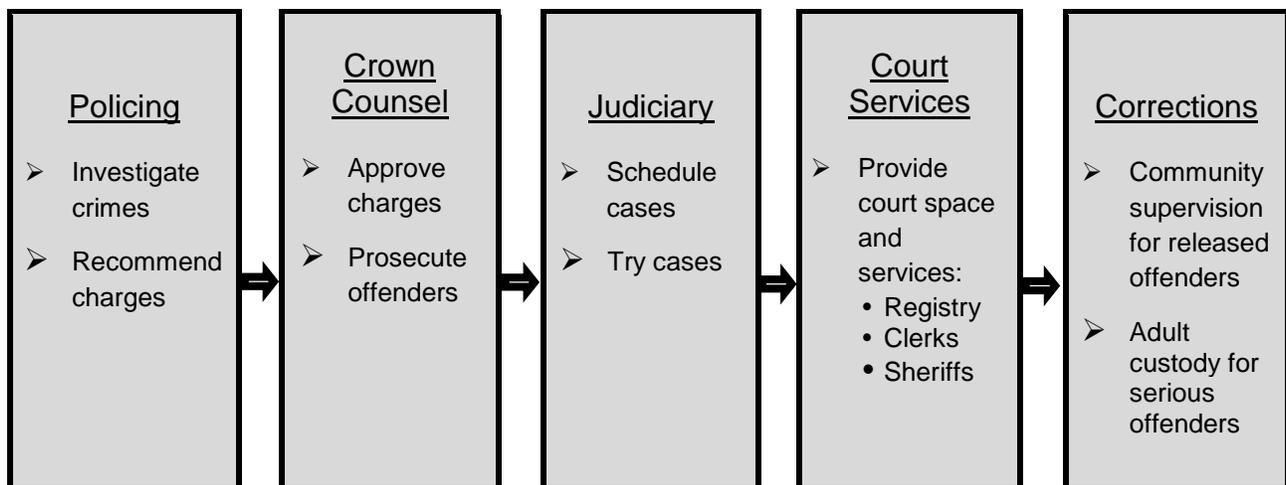


Figure A

How We Compare

Jurisdictional research on justice system comparators was completed. Data was obtained from both Statistics Canada and other provinces. MAG and PSSG advised there are some issues and challenges associated with the use of cross-jurisdictional comparisons as the provinces operate, define data sets and collect information differently. There is still some benefit in comparing jurisdictions as the results can confirm trends and perhaps highlight opportunities to do things differently. Both ministries advised that they recognize the need for consistency across the provinces and are involved in working groups to establish common measures.

Jurisdictional comparators that were reviewed include the following:

Policing Services

While British Columbia's policing costs are mid-range when compared to the other provinces, policing costs have increased dramatically over the past several years. Most of the cost increases can be anticipated; however, there are occasional unanticipated events or external decisions that impact on costs. (e.g., superannuation cost increases for Royal Canadian Mounted Police (RCMP) staff).

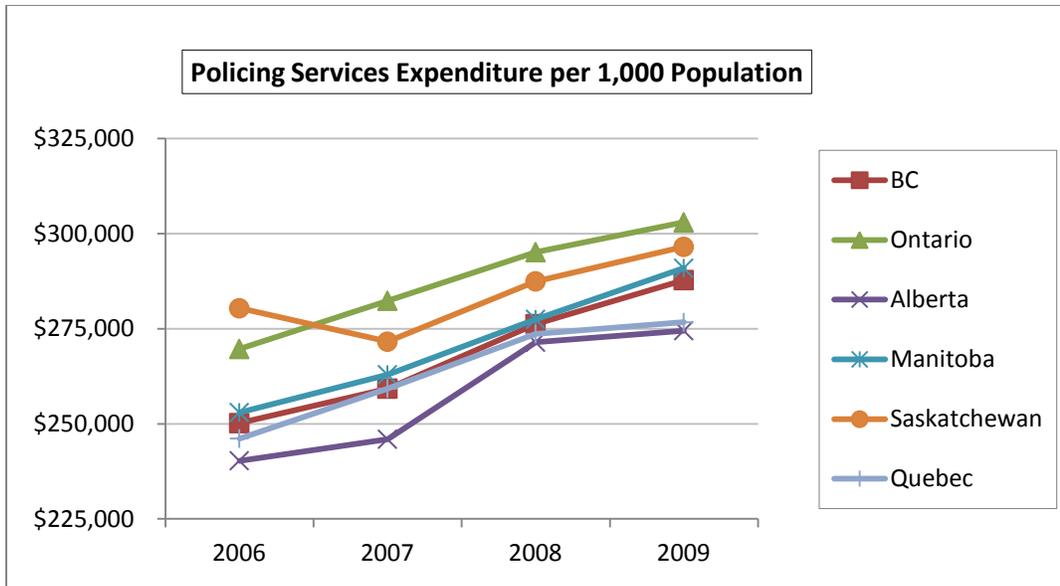


Figure B

Note: Total policing expenditures include municipal, provincial, federal and other RCMP expenditures.

Prosecutorial Services

While British Columbia appears to have one of the highest costs per case of any province, Crown Counsel have authority for the charge approval process, unlike some other provinces. Alberta operates a regional court system that makes comparison difficult. Key cost drivers are the number, quality and complexity of Reports to Crown Counsel (RCCs) generated by the police.

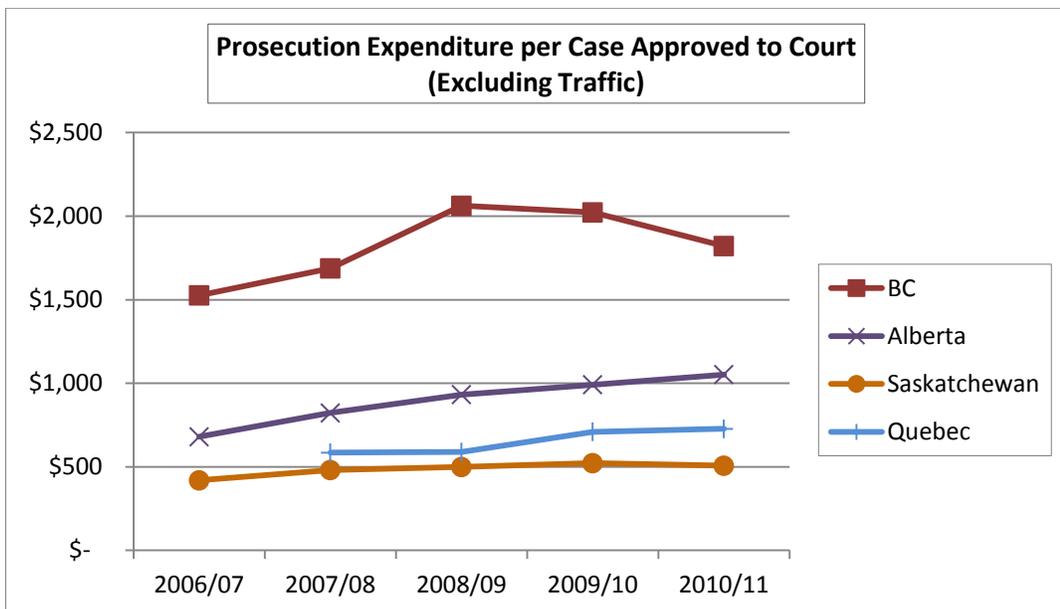


Figure C

Judiciary Services

BC appears to have one of the highest costs per case of any province; however, Ontario does not include Family or Civil cases while Alberta operates a regional court system. These factors make comparisons difficult.

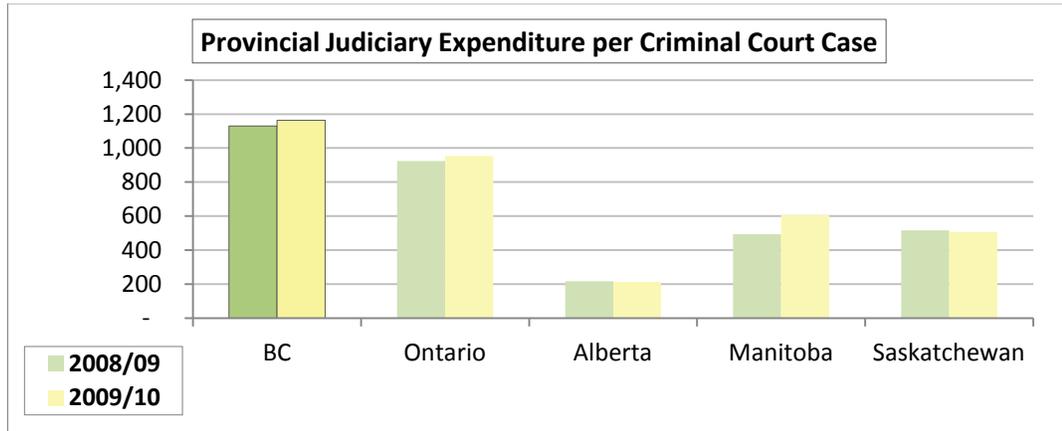


Figure D

Corrections Services

The costs of providing corrections services are trending up at a very high rate. Since 2006/07 the Corrections Branch has experienced increases in the adult custody population, adult custody correction centre staff, correction centre cells and numbers of community corrections clients. Using average per diems, the increase in the cost of adult custody and community supervision growth is about \$25 million.

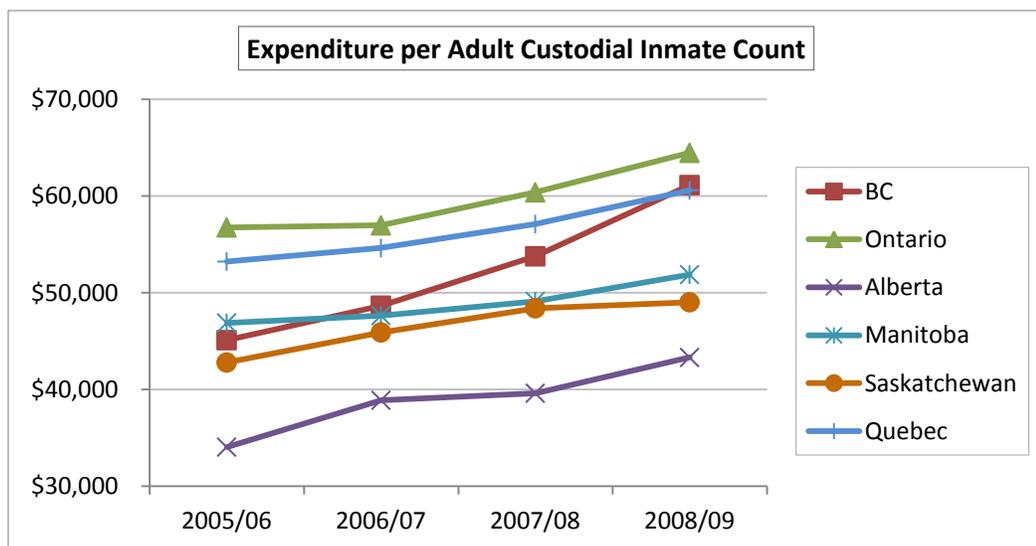


Figure E

Comments and Recommendations

1.0 Accountability and Decision Making

Overall, there is no clear accountability for justice system-wide results in one place as each branch has their own accountability “framework”. This has resulted in fragmentation, weakened data quality and limited performance measurability. Improvements in that area would allow for better decision making capability.

Further, a gap exists between accountability and authority stemming from constitutional and/or statutory requirements. MAG is accountable to service the courts; however, they do not have the authority for court scheduling, which is done independently through the judiciary. This creates challenges for the ministries and impacts on effective and efficient use of resources available to the justice system.

1.1 Business Planning

Strategic and business planning processes are inconsistent and generally insufficient across both ministries. Branch business planning is done in isolation without consideration of strategic alignment. This has resulted in a less proactive and increasingly reactive approach when addressing system-wide issues. In addition, branches develop annual budgets in relative isolation, leading to inefficiencies and difficulties in the ministries being able to respond to corporate priorities.

In the absence of an integrated approach to business planning, growth pressures may not be treated in a strategic manner, ultimately impacting on justice system efficiency and effectiveness.

Recommendation

- (1) The ministries should implement an integrated approach to business planning and budgeting with branch plans that are clearly aligned.**

1.2 Decision Making

The Criminal Justice Executive Committee (CJEC) includes representatives from MAG and PSSG, as well as Ministry of Children and Family Development, and is scheduled to meet once a month; however, meetings have been sporadic. The objectives of CJEC include ensuring that there is a provincial, government-wide position on all criminal justice issues, that operations are integrated and to review budget priorities. It is unclear whether decisions made by CJEC consider system-wide impacts.

CJEC minutes indicate that there is discussion of key initiatives affecting the ministries. The need for branch alignment and ministry integration has been identified, and there is reference to coordinating committees being established and the need to coordinate budgets. However, it is not clear to what extent these objectives are being met.

Executive
Financial
Reports

Financial reports may not be given adequate attention. Executive Financial Reports are widely distributed to executives of both ministries and other senior staff. The financial information leading to the reports is discussed by a group of senior financial staff. While there is a separate Strategic Planning and Budget Executive Committee in MAG, no minutes are taken, although the ministry has advised that very short discussions do occur approximately five times a year.

As discussed above, a more integrated approach to business planning and budgeting would necessitate a system-wide view and positively impact justice system efficiency and effectiveness.

It should also be noted that the ministries are also susceptible to changes in government direction, both federal and provincial. New policy initiatives such as police officer recruitment and amendments to the *Family Law Act* can have both positive and negative cascading impacts on the ministries' resources.

1.3 Corporate Financial Framework

The corporate financial framework is weakened by the decentralized corporate services model in place within both ministries. This impacts on data quality and measurability, and operational information is not viewed through a systems-wide lens. The decentralized model may also result in the duplication of financial functions across the two ministries and the inefficient use of resources.

Management Services Branch (MSB), which provides corporate services to both ministries, does not have adequate control over the financial information it has oversight responsibility for, leading to data quality issues and a lack of accuracy in internal reporting, which may ultimately have an impact on decision making. Branch financial and operating information sometimes differs from the same information received from MSB.

Corporate services staff in the branches have no functional reporting relationship to MSB, which impacts the effectiveness of the corporate services framework within the ministries. For

example, the Chief Information Officer for the ministries has little authority to enforce corporate Information Technology (IT) solutions across the ministry and has to rely on a collaborative model with the branch IT departments.

Corporate
Services Staffing

The majority of corporate services staff (70%) are located in, and provide services for, specific branches across both ministries, with only a relatively small team of corporate services staff operating from a “corporate” perspective. An internal Corporate Services Review (CSR), led by MSB in September 2010, had identified a number of decentralized positions in the various branches that were of a corporate service nature (corporate planning, finance, strategic human resources, facilities, Information Management/Information Technology and cross-functional corporate services responsibilities).

The CSR clearly illustrated the decentralized nature of corporate services and one of the key recommendations was that consideration should be given to analyzing potential efficiencies and the effectiveness of a consolidation of corporate services.

Recommendation

- (2) The ministries should review the potential benefits of consolidating management services across the justice system.**

1.4 Independence

The police, Crown Counsel and the judiciary require independence to fulfil their responsibilities. This independence has a significant impact on the effective and efficient use of justice system resources. The police have the independence to determine who to investigate and how to conduct an investigation. Crown Counsel have the independence to determine which cases to prosecute based on the likelihood of conviction and whether or not it will serve the public interest. The judiciary has the independence to conduct trials fairly and impartially.

Each Crown Counsel is independent in the exercise of prosecutorial discretion, subject to the directions of the Assistant Deputy Attorney General (ADAG) or another Crown Counsel designated by the ADAG. Crown Counsel decide independently whether to lay charges and continue prosecution, based on assessment of the evidence in a police Report to Crown Counsel and on criteria including the likelihood of conviction and serving the public interest.

Judicial independence is implied within the *Constitution Act* and *Canadian Charter of Rights and Freedoms* and is reinforced in case law. Furthermore, it is the judiciary's perspective that, as a third branch of government, they are accountable to themselves and not collectively or as individual judges, to either of the other two branches of government. Currently MAG relies heavily on the good relationship they have with the judiciary to assist in achieving effective resource allocation.

Court Scheduling

MAG has responsibility for serving the courts yet has no decision making authority over court schedules, which are set independently by the judiciary. This impacts on MAG's ability to properly plan and maximize use of its resources.

For example, the Criminal Justice Branch (CJB) has accountability for maximizing Crown Counsel resources. However, the Branch has no decision-making authority over courtroom administration as the judiciary is responsible for setting the courtroom schedule. This independent scheduling impacts on the effective use of Crown Counsel and court services resources as it has no influence in determining the trials to be heard and the scheduling of those trials.

The judiciary schedules courtroom activity and its practice of "stacking-up" cases (i.e., over-scheduling courtroom time each day), means that CJB is reactive to the judiciary's actions. Regional Crown Counsel are tasked with maximizing the effectiveness of their staff resources within this major constraint, which requires counsel to work on files and prepare witnesses for cases that do not proceed that day. CJB's focus is to maximize counsel's ability to be in the courtroom.

The judicial scheduling of cases creates challenges for CSB and impacts effective and efficient use of branch resources, in particular, sheriffs and court clerks. The judiciary, through the rota (schedule of judge sitting hours), drives the number of staff required. CSB staff availability is not a consideration of the judiciary when developing the rota and the needs of the court.

A *Court Services Act*, a new act currently in draft with CSB, is intended to address a key policy issue by determining the appropriate reporting relationships for court administration while preserving judicial independence. A second related consideration is determining the amount government is able to stipulate as a limit on resources available while balancing the independent functioning of the judiciary with the budgetary flexibility required by government.

Recommendation

- (3) The ministries should work with the police, prosecutors and the judiciary to ensure the efficient and effective operation across the justice system.**

2.0 Linkages and Coordination

Overall, the components of the justice system are not well integrated, and there is a lack of integration between the individual branches which tend to operate as silos. Key stakeholders across the system do not interact strategically as one system and operate largely independently of each another. Further, branches prepare and retain full control over their financial information. As a result, there is little opportunity for the sharing of resources and for resource maximization.

There is a lack of coordination between financial and operational data; however, there are a number of cross-ministry initiatives occurring, resulting in some degree of coordination of justice system activity and justice system reform. Business cases and post assessment of justice reform initiatives are not consistently undertaken.

The CJEC is aware of the need for better integration across the justice system, although there is no overarching strategic plan in place intended to drive this objective.

2.1 Financial Integration and Coordination

MSB coordinates financial information from the branches and deals with central agencies; however, branches retain full control over their financial information, which is approved by their Assistant Deputy Minister. This approach tends to limit resource sharing and opportunities to maximize resources.

Committees meet regularly to coordinate between branches but these are generally informal and not documented. An additional committee, consisting of senior MAG financial executives, was formed to focus strictly on financial issues.

There is little opportunity for the sharing of resources between corporate services staff, and MSB conducts little quality assurance due to workload pressures.

2.2 Operational Integration and Coordination

Cross-ministry coordination of justice reform initiatives is underway. However, results are mixed and key stakeholders including the judiciary and lawyers are not always adequately consulted. Further, business cases with clear objectives and performance criteria are not routinely developed, and the post evaluation of results is not consistently completed. Coordination in support of service delivery is effective; however, as discussed in Section 1.4, in working with the judiciary, MAG relies heavily on good relationships to assist in achieving effective resource allocation.

There are a number of committees coordinating work; however, these are typically informal and do not often result in resource sharing and optimization of resources. However, there are several examples involving cross-ministry work with the goal of increasing efficiency and effectiveness including:

- A Risk-Based Offender Management reform initiative is underway involving an integrated approach to justice and offender management intended to reduce costs associated with frequent offenders.
- A series of Family Law Reforms designed to reduce operating costs are underway.
- The Alternative Measures Project, a collaboration between Corrections Branch and CJB, is resulting in an increasing number of cases diverted from the courts. CJB also partners with other agencies and branches where possible, to leverage expertise, share resources and increase efficiency.
- The development of justice transformation projects.
- The Road Safety Systems and Business Intelligence Strategy is an example of an effective, integrated approach that may ultimately have a positive impact on the court system.
- A simulation model, under development by a CJB/Justice Services Branch (JSB) working group and Simon Fraser University, is used to examine possible impacts and opportunities across the justice system.

Recommendation

- (4) **The ministries should ensure development of good business plans (including performance measures and goals) and establish monitoring, evaluation and reporting protocols with regard to justice reforms.**

3.0 Workload and Cost Drivers

Each branch is a workload driver for another branch. However, opportunities are not taken on a consistent basis to share information and coordinate activities to maximize resources and contain costs.

Workloads and their associated costs are driven primarily by factors beyond the control of the ministries. For example, the ministries cannot control the number of criminal and family law matters that occur even though they are the primary workload and cost drivers for the justice sector.

While crime severity and crime rates have decreased over the last several years, it is unclear why the number of cases and pressures on the justice system has continued to increase.

3.1 Policing and Security Programs Branch

The Policing and Security Programs Branch has a wide range of workload and cost drivers, some of which can be anticipated (e.g., RCMP contract renewal, RCMP salary increases) and others that cannot be anticipated (e.g., responding to current events such as the Vancouver riot review and gang violence). A significant cost driver of the branch is the Provincial Police Service (PPS) contract valued at approximately \$274 million; which increased by 60% between fiscal 2003/04 and 2009/10.

Other workload and cost drivers the branch is managing include:

- Increasing oversight of the PPS contract.
- The creation of the Independent Investigations Office to investigate complaints against the police.
- The rising number of issues the branch is managing (e.g., use of tasers).
- The end of one-time federal government funding to hire 168 additional police officers as part of the provincial government's "Guns and Gangs" strategy to fight organized crime and gang violence; if continued, it will cost the province \$22 million per year to keep these officers.

- Increasing complexities in the policing environment (e.g., higher complexity crimes, more complex policing rules) that require additional time and effort before a case can go to court.

3.2 Criminal Justice Branch

The primary drivers of CJB’s workload include the volume of Reports to Crown Counsel received from the police, judicial scheduling, new legislation and the increasing complexity of criminal cases.

CJB has no control over the volume of Reports to Crown Counsel that it receives from the police and the branch has the obligation to prosecute all cases that have both a substantial likelihood of conviction and serve the public interest. Each case is unique and therefore the workload cannot be easily forecast. CJB uses the resources it is allocated to process the number of cases that is within its capacity. As previously stated, the judiciary “stacks up” cases which can result in less than optimal use of counsel’s time.

CJB classifies the severity of criminal offences into four categories with Category 1 crimes being the most serious offences and Category 4 being the least serious. Category 1 criminal offences have increased by 1.2% over the past five years while the number of less serious offences (Categories 3 and 4) has decreased by 15% during the same period, as shown in Figure 3.2.1 below:

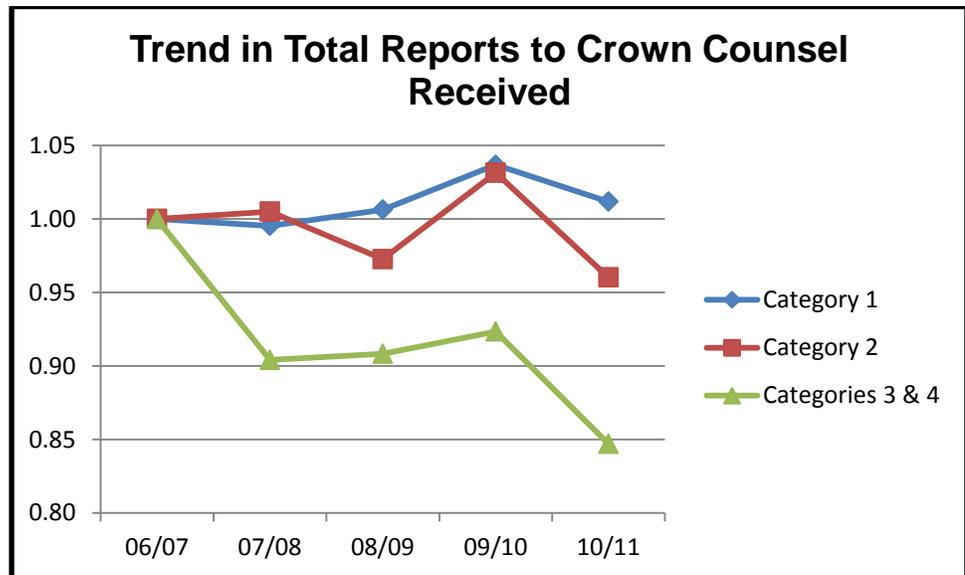


Figure 3.2.1

The time needed to conclude a case (i.e., when a final court decision has been reached) has increased 26% since fiscal 2006/07 to an average of 270 days. This places a growing number of cases at risk of a judicial stay (i.e., a dismissal of charges) due to the inability of the accused to receive a timely trial, which is a Constitutional requirement. Other cases are stayed by Crown Counsel when the cases are delayed for 14 months or more due to an inability to proceed after adjournments (e.g., due to witnesses not appearing to testify, witnesses recanting testimony, witnesses forgetting what they observed, police officers being transferred). Approximately 25 % of all cases concluded each year are stayed and many more are at risk due to an inability to proceed to trial. The average number of days to conclude all categories of cases has increased over the last five years, as shown in Figure 3.2.2 below:

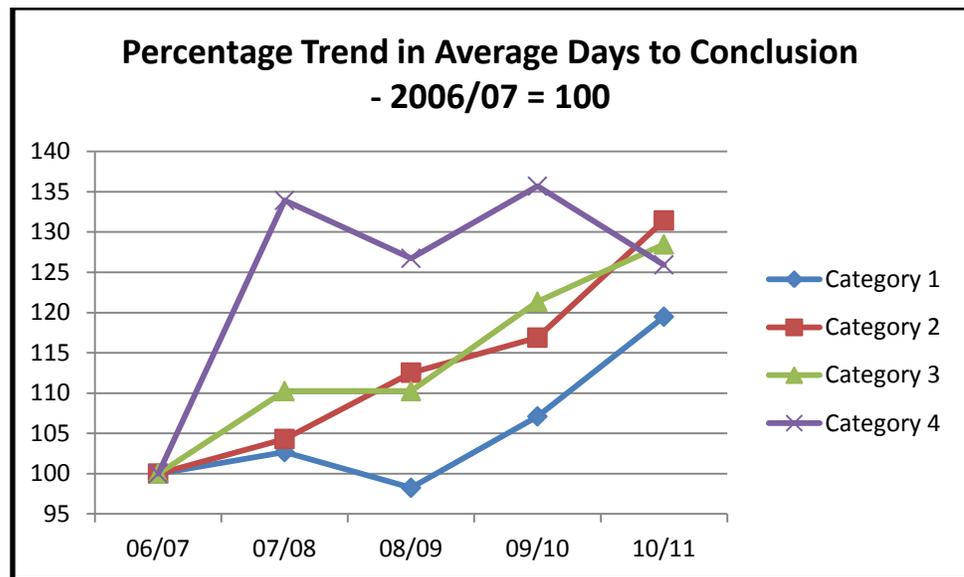


Figure 3.2.2

3.3 Court Services Branch

CSB's workload is driven by court filings, judge sitting hours and the need for prisoner escorts. Court Administration's priority is for coverage in the court rooms. CSB reassigns staff from the Court Registry to assist in court rooms resulting in the service delivery of the Registry to suffer (e.g., counters are not staffed, longer processing times). Court Registry staff are responsible for processing case documentation, file and exhibit management and the preparation and distribution of court orders.

Courtroom
Closures

A top priority of the branch is ensuring that there are no unscheduled courtroom closures by having them available and staffed to support the rota. However, unscheduled court closures have recently occurred due to insufficient staffing levels.

The decision to close a courtroom lies within the judge's discretion. Since November 2010, there have been 45 courtroom closures (20 closures in 2010/11 and 25 closures in 2011/12 up to the time of our review) totalling 156.75 hours. Five of the closures were due to CSB's inability to provide court clerks and the other 40 were due to the lack of a sheriff. Since November 2010, there has been an average of 24 instances per month where a Provincial Court Judge decided to proceed without a sheriff, where a sheriff would ordinarily have been present in court.

Number of
Cases

While it is difficult to quantify the backlog of cases, there are indicators that show the increasing pressure on the courts and the court registry. The total number of new Provincial Court cases has increased from 216,152 in fiscal 2006/07 to 231,899 in fiscal 2010/11 (a 7.3% increase).

- The average wait time to schedule an adult criminal trial has increased from 8.3 months in fiscal 2006/07 to 10.3 months in fiscal 2010/11.
- The number of criminal cases pending for more than 180 days increased from 17,862 in fiscal 2006/07 to 18,391 in fiscal 2010/11.

Judge Sitting
Hours

Over the last five years, the number of Provincial Court Judge sitting hours has decreased by 3,500 hours. When all three levels of court are considered, there has been an increase of 25,500 new cases and a reduction of 2,500 judge sitting hours.

3.4 Justice Services Branch

Workloads in JSB are driven primarily by factors outside the control of the branch, including government and stakeholder requests for legislative and policy changes.

A major cost to the justice sector is the obligation for the province to provide legal aid to people who cannot afford legal counsel. The *Canadian Charter of Rights and Freedoms* states that everyone has the right to retain and instruct counsel without delay. Applicants denied legal aid can apply to the court to have their Charter Rights enforced and thereby obligate the province to provide funding for legal counsel. The legal counsel required by

defendants in the increasing number of large, complex criminal cases (e.g., Air India, Picton) can result in the province paying millions of dollars in legal aid.

Public demand for the Family Justice Service Division's (FJSD) mediation and information services is a major workload driver for the branch; these services are provided to low income families at no charge. FJSD's budget has not varied significantly during the past five years even though the number of clients served by the division has grown by 28% over the past five years. This growth is the result of mandatory mediation assessments and of attendance at Parenting After Separation sessions becoming requirements of the courts in many communities; the funding to manage the increased demand has come from federal funding and from the shifting of funds from other programs. Demand for FJSD services is not being met because its services are not provided to all communities due to budget constraints; the unmet demand is not tracked. The division is starting to use technology (e.g., video conferencing) to service its clients but this is also limited by the budget.

3.5 Corrections Branch

The Corrections Branch's major workload and cost drivers arise from the numbers and risk level of pre-trial and sentenced clients. The branch responds to workload demands through overtime, auxiliary staff and lower levels of program delivery.

The risk levels of sentenced offenders have risen in recent years, while the numbers of pre-trial remand and bail clients have increased faster than sentenced clients. Two results of this have been an increase in the fast turnover of remand inmates and the resulting workload for Corrections Centers, and an increase in needed interventions and general supervision/program delivery for Probation Officers.

Between April 2006 and July 2011, the Corrections Branch has experienced the following challenges:

- a 10% increase in Adult Custody population;
- a 7.8% increase in Correction Centre cells;
- a 21% increase in Community Corrections clients; and
- an increase in branch costs from inmate and client growth of approximately \$25 million (based on average per diems).

Issues that the branch will face in the future include the enactment of Federal government's legislation to get tough on crime. Bill C16 and Bill C25 are forecast to result in 200 and 270 additional inmates respectively, which is a 17% increase over the current average inmate count. At the current per diem rate, the additional 470 inmates will cost the branch approximately \$31 million per year.

4.0 Performance Management

Due to the lack of a suitable performance management framework, it is unclear how much of the pressure on the justice system is due to growing case complexity and number of cases versus inefficiencies within the system itself.

Performance management is inconsistent and is not integrated across the justice system. Formal performance measures and targets are not in place across all areas of the sector and therefore are not used to assist with strategic planning and financial monitoring. Performance measures in one branch are not used to drive performance measures in other branches in an integrated, coordinated, deliberate manner, and results are not consistently assessed. As a result, in some instances management uses anecdotal information, which is neither reliable nor robust enough to enable sound decision-making.

4.1 Justice System Performance Measures

A Justice System Performance Measures report is published two to three times per year to aid executive members in assessing how well the justice system is operating as a whole and to help identify opportunities for increased efficiencies. The report is a very long and detailed collection of measures. It is unclear how it is used to inform strategic and operational decision making. The ministries acknowledge that the measures are in the development stage.

4.2 Branch Performance Measures

In addition to the measures in the Justice System Performance Measures report, individual branches may have their own performance measures. These measures are in different stages of development and are not always quantitative. As a result, performance is challenging to measure and assess, and there is a lot of reliance placed on anecdotal information.

Policing and Security Programs Branch

The Policing and Security Programs Branch has few performance measures in place but is currently developing some for the branch itself and the PPS, including the evaluation of integrated police units.

Criminal Justice Branch

CJB monitors performance using a number of key measures such as days to trial and percentage of trials stayed; the actual results are compared against historical ranges and any anomalies are analyzed to identify the underlying causes. However, the branch has no key measures or targets driving levels of performance. For example, the Crown Counsel time spent on each case is not tracked and therefore it is unclear whether Crown Counsel resources are maximized. The branch does not estimate its resource requirements for each case. This impacts the ability of the branch to estimate the level of resources (full time equivalents (FTEs) and costs) required to effectively manage the caseload based on historical patterns.

As previously stated, CJB classifies the severity of criminal offences into four categories with Category 1 crimes being the most serious criminal offences and Category 4 being the least serious. This information would be useful to CSB for forecasting the length of each criminal trial and determining the number sheriffs required for security and escorting prisoners. The information would also be useful to the Corrections Branch for forecasting prisoner population because convictions of the more serious crimes will likely result in the incarceration of the defendant.

Court Services Branch

CSB has developed a number of performance measures and performance targets, including court results data entry timelines, document processing timelines, on-time delivery of prisoners by sheriffs, jury duty summons response rates and revenue targets.

Corrections Branch

The Corrections Branch does not prepare any formal performance measurement reports, but success is measured against a number of quantitative measures. As previously stated, the recidivism rates and trends are monitored, and the effects of programs and other interventions are evaluated through formal studies.

During our review, the ministries were developing plans to implement a Justice Business Intelligence Program to help the justice system become more strategically aligned and eliminate the silos. Some of the information needed to implement this program is already available within the various branches but needs to be used across the sector to enhance the effective use of the system's resources.

Recommendation

- (5) The ministries should develop a set of integrated performance measures and targets to drive results and assist with strategic planning and monitoring across the justice system.**

5.0 Operational and Financial Controls

At the branch level, operational and financial controls are largely effective and discretionary spending is tightly controlled. Particular attention is paid to managing salary dollars in order to manage the annual budget, and the costs of large contracts such as the PPS agreement are closely monitored.

While various cost containment strategies are in place such as justice reform and business transformation, business cases are completed and adequate assessments are not consistently conducted. The ministry confirmed that evaluations of justice transformation initiatives are planned or underway.

5.1 Staffing

Ministries have controls in place over their expenditures. Salaries and benefits represent a large portion of the total ministry budget and controls are focused on the management of FTEs, salaries and benefits.

For example, CSB has developed tools to assist with staff resource capacity analysis and planning. Although these tools are labour intensive they have assisted with their overall branch planning process.

5.2 Contracts and Discretionary Spending

Contracts represent a large portion of the total ministry budgets. Large contracts such as the PPS contract are closely monitored. While cost increases for the PPS are generally predictable there can be the occasional unforeseen cost, (e.g., superannuation increases for RCMP staff). PPS cost increases have been managed through reductions in the number of police officers, and through delayed capital acquisitions (e.g., in-cell cameras, vehicles and computers).

Approximately 66% of JSB's budget is transferred to the Legal Services Society (LSS) to provide legal aid (\$68.5 million in 2010/11). LSS has strong controls in place to manage the costs of

all types of litigation, for example, LSS has senior members of the criminal bar assess the reasonableness of budget proposals and review the billings for the defence in larger criminal cases.

Discretionary spending is also tightly controlled (e.g., overtime, hiring, IT expenditures); since fiscal 2009/10 the ministries have introduced spending directives to implement additional controls and to restrict spending.

5.3 Cost Containment Strategies

Various cost containment strategies are in place including justice reform and business transformation initiatives; however, the ministries are challenged to consistently demonstrate the effectiveness of these initiatives.

Some of the JSB's initiatives have been successful in diverting people away from the court system (e.g., the family justice service centres, the motor vehicle mediation process). The branch estimates that its family mediation services have resulted in \$7.8 million of avoided court costs due to the diversion of cases away from the courts and/or a reduction in the time that these cases spend in court.

However, it is not possible to conclude on the success of some of the current justice reform initiatives (e.g., Downtown Community Court, Bail Reform Pilot and Prolific Offender Management Pilot). This is because rigorous business cases (with desired/expected outputs and outcomes) were not developed prior to the projects being approved. As a result, there are no pre-established criteria available to assess the performance of the pilots.

Figure 5.3.1 below shows a sample of the initiatives reviewed during the course of our work.

Sample of Initiatives Reviewed

Initiatives	Estimated Savings/Cost Avoidance			Other comments
	Court Hours	Judges	\$Millions	
Small Claims Court Pilot	1,600	2	0.67	<ul style="list-style-type: none"> • No business case. • Costs required on new processes/resources were not analyzed. • Pilot won't be expanded. • No further tracking after the final evaluation.
Small Claims Tribunal	4,600	6	1.9	<ul style="list-style-type: none"> • High level business case. • At concept stage. • Estimation is based on the results of small claims pilot.
Downtown Community Court	Not evaluated in the interim evaluation.			<ul style="list-style-type: none"> • No business case. • Project on-going.
Bail Reform	Not quantified. Efficiency was identified but not quantified. Cost analysis was not a component of the evaluation.			<ul style="list-style-type: none"> • No business case. • Pilot won't be expanded. • No further tracking after the final evaluation.

Figure 5.3.1

Cost containment strategies are being introduced, including the use of video conferencing to reduce prisoner transportation costs. This has been particularly useful for bail hearings.

Recommendation

- (6) The ministries should ensure that business cases for cost containment strategies are robust and developed prior to the projects being approved.**

6.0 Cost Analysis

Despite MAG and PSSG having strong operational and financial controls, expenditures for both ministries have exceeded their budgets for the last five years due to caseload and operational demands (total expenditures for fiscal 2010/11 were approximately \$1.2 billion). Cost analysis is undertaken but could be strengthened, for example, Crown Counsel costs and court costs (e.g., per case, case type) are not routinely tracked.

6.1 Expenditures

For the last five years, actual expenditures for both ministries have exceeded the budgets. Figure 6.1.1 below compares the budget and actual expenditures for the ministries on a combined basis over the last five years.

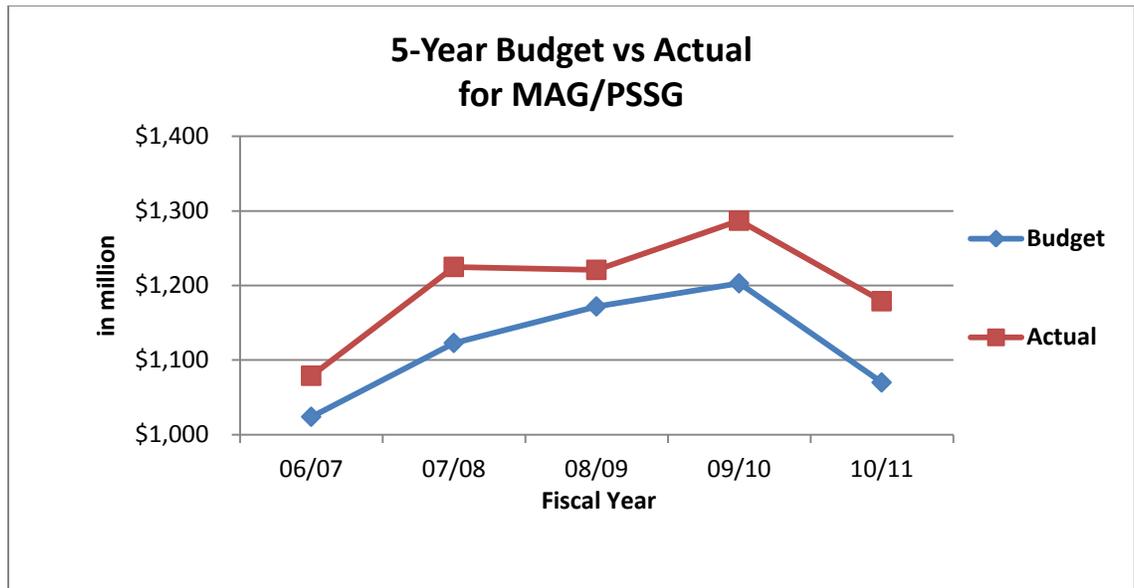


Figure 6.1.1

Ministries have taken steps to manage the budget pressures although these have impacted the overall operation of the justice system. For example, CSB made staffing cuts in fiscal 2009/10 and 2010/11 which increased operational pressures in the courtrooms. Other branches and programs within the ministry have also made spending cuts. For example, the LSS budget has been reduced by 25% since fiscal 2001/02 to \$68.5 million, resulting in the society reducing its staff complement from 442 to 142 people and reducing the number of offices from 59 to 2. These reductions were managed by LSS changing its intake structure and using more contracted lawyers.

6.2 Cost Analysis

The ministries' cost analysis could be strengthened, even though they already conduct cost analysis of external programs and services and undertake internal cost analysis on salaries, benefits and FTEs; examples include Crown Counsel costs and court costs (e.g., cost per case and cost per case type) which are not routinely tracked. This information would be useful for analysing current expenditures and forecasting future costs.

Major cases have specific staff and resources (premises, communication etc.) assigned and therefore all major case costs incurred by CJB can be specifically tracked. However, the total costs of major trials are not known as other branches do not track these costs (e.g., court room costs). Furthermore, the ministry cannot analyze actual costs for routine cases because it does not track Crown Counsel time.

Court costs per case or case type (i.e., family, civil and criminal) are also not tracked. However, CSB collects data that could assist in creating a cost per case calculation and could develop a methodology that would accurately depict the court cost per case.

Provincial Police
Service

Policing is very expensive and the cost of providing the PPS is rising significantly faster than the rate of inflation; the cost of the PPS has increased 58% between fiscal 2003/04 and 2009/10. This is primarily due to:

- increasing complexity of policing;
- new regulations (e.g., as of December 2007, RCMP officers must have back-up available on all calls); and
- emerging priorities such as the Integrated Gang Task Force.

Recommendation

- (7) The ministry should consider tracking the total costs of cases, both routine and major, for all justice system branches.**