

# Modernizing British Columbia's Justice System

Minister of Justice and Attorney General

## Green Paper

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BRITISH  
COLUMBIA



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## Message from the Minister

As Attorney General, I am accountable for the work government undertakes each day to prevent crime and adverse events, to ensure accountable policing and effective offender management, and to support an effective and responsive justice system.

I have been privileged to lead significant initiatives to achieve efficiencies in the justice system and help make it more transparent and accessible to British Columbians.

Last year, the new *Family Law Act* received Royal Assent – the first major change to family law legislation in British Columbia in more than 30 years. We are also pursuing plans to solve disputes outside the courts, and to provide resources and other supports for civil and family dispute resolution and mediation. We support use of videoconference technology and the continued development of eCourt. And we are launching an engagement initiative to involve British Columbians in a discussion that will support development of a new policing strategy in British Columbia.

Furthermore, last year we introduced legislation to create an independent investigations office. That office investigates situations of death or serious harm involving police. We appointed the first Chief Civilian Director for this office in December and work is underway to have this office begin investigations by mid 2012.

Throughout last fall, work was undertaken to scrutinize what on the surface appeared to be conflicting data about inputs to and outputs from the justice system. Despite the many reform and efficiency initiatives undertaken over the past several years, our justice system continues to exhibit backlogs and delays.

The prevalence of crime is decreasing in British Columbia. The overall crime rate in this province continued to decrease in 2010 for the seventh consecutive annual decrease and the lowest recorded crime rate in 30 years. This has meant a drop in the number of new provincial criminal court cases by around 13,000 from what it was 10 years ago.

This Green Paper represents our current thinking on the situation in the justice system in British Columbia. It reflects current and anticipated reform initiatives in the ministries for which I am accountable, and it poses a series of challenges that will form the basis for further exploration and recommendations.

I am pleased that Geoffrey Cowper, QC, has agreed to work with me on this vital agenda of justice reform.

It is time to take a hard look at how we can modernize the justice system in British Columbia. I invite all British Columbians to partner with me in this exploration.

## Executive Summary

This Green Paper is intended to highlight several key issues within the justice system of British Columbia. These issues include the way independence is preserved, the way information and processes are managed, and the way change is implemented.

While significant progress has been made within the justice system in recent years, problems of cost and delay are appearing to a degree which is increasingly unacceptable. Action is required due to the reliance of British Columbians, their families and our economy on a sound system of justice.

While the system's basics – its integrity, its personnel and its ability to innovate – remain strong, indicators of the system's performance and current health give a mixed and confusing message, particularly in the area of criminal justice. "Inputs" into the system such as the rate of crime and the number of new cases are down. But the length of time spent by people remanded in custody or on bail awaiting trial is increasing, as is the total number of people being managed by the Corrections system. Costs, too, are increasing in real terms.

The system is complex and challenging to reform. While it is possible to point to areas where a discussion of reform is warranted, it is also true that there are significant issues of culture and tradition within the system that may impede real understanding and change. Standing above this is the issue of independence of decision-making within the system. It is vital for our democracy that the exercise of judgment in criminal and civil cases – by police, by counsel, by judges and others in the system – be free of interference or influence. At the same time, the close linkage between the different parts of the justice system in managing case files, and our need to explain what is happening within the system, means we must administer the justice system *as a system*. In doing so, we must remain on strong constitutional grounds.

These complexities were before Deputy Ministers during a review of the Ministries of Attorney General and Public Safety and Solicitor General throughout the autumn of 2011. They considered evidence showing that inputs to the system were in decline, as well as the measures currently being implemented across the ministries that are meant to increase efficiencies and reduce future pressures. Considering the counter-intuitive results of the ministries' work – that resource demands continue – Deputies engaged Internal Audit to look more closely at immediate funding pressures and future costs.

A number of areas of possible reform have been identified, and many more remain to be discovered. However, two important steps are required before further conclusions about next steps are drawn. First, an immediate review by an external observer is sought by government, focused on those areas considered within the realm of judicial independence and including the delivery of concrete recommendations for action. Second, input on this Green Paper will be sought from participants in the system as well as the citizens of British Columbia, who are the system's ultimate stakeholders.

The review and consultations will continue at the same time as ongoing administrative reform initiatives are being undertaken in the ministries. In July, government will issue the results of the review and consultations, along with an update on the ongoing administrative reforms, and will develop a plan of action to be outlined in a White Paper on Justice Reform in September 2012.

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## 1. Context – Deputy Ministers' Review

In the autumn of 2011, the Deputy Minister to the Premier convened a working group of Deputies and staff from across government to assess growing resource demands on and from the Ministries of Attorney General and Public Safety and Solicitor General. The work was designed to address probing questions from the then recently-appointed Attorney General.

This approach is consistent with other recent, analytic work by government to scrutinize how the government does business, whether its programs and policies are meeting their stated intent, and whether taxpayer dollars are being used as efficiently and effectively as possible.

As they reviewed all of the different areas of work of the two ministries, deputy ministers considered the many reform initiatives already planned and underway. They acknowledged that the demands for increased funding were occurring despite these extensive reform initiatives, many of which were designed to achieve improved efficiencies and reduce pressures.

In the Ministry of Attorney General (MAG), work was underway in the autumn to present the proposed *Family Law Act* to the legislature. Subsequently given assent (in November 2011), the *Family Law Act* repealed and replaced the *Family Relations Act* and reflects current issues facing families and supporting non-court resolution of disputes. The *Act* enables and encourages non-court dispute resolution processes including mediation, parenting coordination, arbitration and agreement.

MAG is currently advancing work to create an alternative to the Provincial Court for disputes, including strata corporation disputes and with a view to including other kinds of disputes that might be similarly addressed. Such early resolution opportunities will cut costs, delay and complexity, and maximize the number of judges available for the cases that require court intervention.

In Public Safety and Solicitor General, (PSSG) a number of reform initiatives are also being advanced. These include implementation of authorities provided by recent amendments to the *Police Act* and Road Safety System (RSS) Transformation that will improve road safety, improve traffic ticketing processes, establish alternatives to court for resolving traffic ticket disputes, reduce backlog in Traffic Court, and reduce law enforcement attendance at Traffic Court. They also include extensive work recently undertaken to secure a new RCMP contract with improved provisions regarding partnership, accountability and cost containment.

PSSG is also implementing risk-based integrated offender management (IOM), meant to enhance collaborative case management between correctional centres and probation officers by developing case supervision plans for high-risk offenders who are currently incarcerated and transitioning to community supervision. IOM is expected to produce significant reductions in incidents of re-offence and contribute to enhanced public safety.

The Ministries have also worked together to identify a suite of medium- and long-term mitigation strategies that will increase administrative efficiencies, reduce complexity, increase citizens' access to justice and reduce recidivism.

Even with these initiatives underway, there continued to be demands for increased funding. Deputy ministers concluded there may therefore be more profound issues to understand; issues related to governance, administration, data and evidence, and outcomes. Considering that taxpayers fund the justice system at a rate of over \$1 billion each year, deputies concluded that more in-depth analysis was required, based on the following problem definition:

- Immediate funding pressures
- Future costs
- Resource pressures leading to adverse outcomes.
- Lack of a comprehensive inter-ministry strategic plan to deal with caseloads and costs.

Over the past year, the government's Internal Audit team has been relied upon more and more to undertake in-depth accounting reviews and cross-jurisdictional analysis. The team was tasked with supporting the deputy ministers' review, and prepared a detailed report that is being released with the Green Paper. The work of Internal Audit supported this review of all major branches of the justice system, as well as activity areas including accountability and decision-making, linkages and coordination, workload and cost drivers, performance measures, operational and financial controls, and cost analysis.

A number of data sets were fundamental to the Deputies' considerations. They found that costs in policing are trending up at a very high rate, although there are differing metrics across jurisdictions that must be closely considered. Deputies acknowledged that B.C. appears to have one of the highest costs per case of any province. Costs in corrections are also trending up at a very high rate. Again, there are differentials in metrics between jurisdictions that must be considered, but the data provided part of the basis to conclude that more work to assemble appropriate data was required to support development of outcome measures.

With input from Internal Audit, deputies found that the system is fragmented, and that no one group or individual manages the system. While spending controls are in place and tightly managed, there are no integrated performance measures. Of particular concern, and in large part the motivating factor in the preparation of a Green Paper, resourcing requests have not been tied to system performance.

Deputies also identified a number of key challenges. There are very few metrics currently available that allow for system planning. There are unknown costs related to Bill C-10, the federal *Safe Streets and Communities Act*. Although addressed in large part as a result of negotiations with the federal government, there were, during the course of the deputies' review, a number of concerns related to cost of the new contract for the provincial police force.

The deputy ministers' review provides the basis for a broad-based reform agenda, the administrative elements of which will be undertaken (where new) and further pursued (where already underway) under the auspices of the ministry. The Green Paper outlines reform elements that go beyond strict accounting and consolidation of management services. They speak to the independence of the judiciary, the police, Crown and other parts of the system, and their delicate relationship to government's administration of taxpayer dollars. They will be pursued by a senior respected member of the province's legal community, who will report to the Minister of Justice in July 2012. At the same time, an engagement process will be launched as the basis for development of a new policing strategy in British Columbia.

With respect to administrative reforms in the ministries, the deputies concurred with the recommendations of the Internal Audit review, as follows:

1. The ministries should implement an integrated approach to business planning and budgeting with branch plans that are clearly aligned.
2. The ministries should review the potential benefits of consolidating management services across the justice system.
3. The ministries should work with the police, prosecutors and the judiciary to ensure efficient and effective operation across the justice system.
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.
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.

6. The ministries should ensure that business cases for cost containment strategies are robust and developed prior to the projects being approved.
7. The ministry should consider tracking the total costs of cases, both routine and major, for all justice system branches.

Internal Audit suggested there was a sound basis for consideration of stabilization of the budgets of Attorney General and Public Safety and Solicitor General. In the past, priority activities have been funded by contingency. This has resulted in uncertainty about next-year resource levels and the related difficulties in planning.

Deputies concur with this recommendation and look forward to further discussion in the context of Budget 2012.

Deputies acknowledged in their review that their recommendations set the stage for a broad reform agenda in the coming months. Both internal to the ministries and with external resources, they acknowledged that lively debate and good ideas should be expected, along with concern and some anxiety. Government is committed to close collaboration with parties involved in the administration of justice in British Columbia, and is committed to its full participation, from administrative reform, to budget stabilization, to increases in judges, to collaboration with the Legal Services Society to examine legal aid.

## 2. Modernizing the BC Justice System

### 2.1 Basic outline of the system

In British Columbia, our justice system exists and has evolved to deal with behaviour that violates the law, and to address disputes that cannot be resolved informally.

The laws in question are of two kinds. *Criminal law*, where punishment can include imprisonment, typically deals with matters such as violence or theft. Criminal law is developed and amended federally by Parliament, and applies equally in every province. As the penalty for violating criminal law can include loss of personal liberty, the standard of proof is high: beyond a reasonable doubt.

*Civil law* serves as a means of resolving disputes, such as those relating to marriages or contracts. Civil law is developed and amended by each province according to that province's own tradition and circumstances. As civil suits deal with disputes rather than objective offences against persons or property, the standard of proof (the balance of probabilities) is less stringent than in criminal matters.

A common image of the justice system is the courtroom. However, the system itself has much broader scope. The largest single component is the police, who are engaged in the independent investigation of crimes in the community, prevention and awareness of criminal activity, and the enforcement of a broad range of statutes.

Only a portion of the work of the police (recommendation and support of criminal charges) feeds directly into the rest of the justice system, the remainder being devoted to provision of public order and general services to the public. The police are also different from the other justice system components in that the largest single source of funding for policing – and with it, accountability for services – is from municipal governments, followed by provincial and federal dollars.

A Green Paper is issued by government to indicate that:

- it is plain that serious consideration must be given to solving a challenge faced by government
- determining the right course of action first requires bringing the issues to the attention of the public and key stakeholders in a clear manner
- government is committed to announcing legislation or other meaningful action in a subsequent White Paper



Some of the criminal investigation work done by police officers (where there appears to be sufficient evidence to charge someone with a criminal offence) makes its way to the prosecution service in the form of a Report to Crown Counsel. In BC, the prosecutor ("the Crown") decides independently whether to proceed with a charge, based on the likelihood of obtaining a conviction and whether or not prosecution of the case is in the public interest.

If a criminal charge is approved by the Crown, the matter moves into the jurisdiction of the Courts. In contrast, a civil action may be initiated by a private party against a person, company, or institution. Criminal charges, civil actions and appeals make up the range of cases handled by the Courts.

British Columbia has three levels of Court: Provincial Court, the Supreme Court of British Columbia, and the British Columbia Court of Appeal. By far the largest volume of cases (about 100,000 a year) is handled by the Provincial Court, in courthouses across the province. The other Courts handle far fewer cases. Cases proceeding to Supreme Court are usually more complex than those handled by the Provincial Court. The Court of Appeal hears appeals of decisions from the other two courts. The ultimate court, to which British Columbia cases are sometimes appealed, is the Supreme Court of Canada.

The Courts are a venue for resolving civil and criminal cases, and for ordering binding consequences. Having the power to interpret and, in some cases, overturn law on constitutional grounds, they are also an independent branch of government, equivalent to the legislative and executive branches. The judges are supported by a large number of government personnel within the Ministry of Attorney General (MAG) who deliver the basic services necessary to run a secure and efficient court process.

People convicted of a crime may be sentenced to serve time in a provincial prison followed by probation. For long sentences they will be sent to a federal prison possibly followed by parole. They may also be sentenced to a period of supervision in the community, with conditions attached. Prior to trial, accused people may be remanded in custody, or may be released on bail. Other than offenders within the federal penitentiary system, provincial Corrections employees are responsible for the secure management of this population, in and out of custody, and for programs of rehabilitation.

The security, policy and administrative requirements of the justice system extend well beyond the "public face" of police, judges, legal counsel, and corrections. Where youth crime is involved, the Ministry of Children and Family Development oversees youth in custody and under community sentences. The Legal Services Society sets the rate of pay for (and, using largely taxpayer funds, pays) lawyers who accept legal aid cases. The Ministry of Public Safety & Solicitor General manages policing contracts and standards, assistance to victims, crime prevention, and development of legislation. PSSG also administers services closely related to the justice system, including road safety, coroners, fire services, and emergency preparedness. The MAG operates and manages the Sheriffs Service to provide courtroom security and transport prisoners, operates Court Services to staff court registries and court rooms, prepares legislation and ensures access to justice.

Together, our justice system employs more than 15,000 highly trained people to deliver a complex system of services essential for the safety, fairness and economic well-being of life in British Columbia.

## 2.2 Scope of reform discussion

This Green Paper is intended to highlight several key issues for consideration and action by those who govern and manage the justice system. These issues include the way independence is preserved, the way information and processes are managed, and the way change is implemented.

The scope of reform contemplated is restricted to those areas of the justice system governed and financed by British Columbia, and within the constitutional jurisdiction of the executive and judicial branches of the provincial government. Reforms considered “out-of-scope” would include those matters within the jurisdiction of the government of Canada and of the municipal level of government.

While the primary concerns leading to this discussion relate to the criminal aspects of the justice system, civil law depends on many of the same institutions and processes. Both criminal and civil processes are therefore in scope for consideration of reform in coming years.

### **The principle of independence and why it matters**

A basic right of our society is that citizens may expect to be treated fairly and equally before the law. Our legal system is based on the common law tradition, and must accord with the constitution of Canada, including the Charter of Rights and Freedoms.

To ensure these rights are enjoyed, it is vital that those empowered by the public to make decisions in criminal or civil matters – police, prosecutors, judges, probation officers, and others – do so based on the facts of the case and without influence from third parties. It is illegitimate, for example, for elected officials to interfere with the outcome of a police investigation, decision to charge, civil judgement, or bail order.

This principle is central to the delivery of our justice system. The challenge for all those who manage the system – the judiciary, the police, the executive branch of government, and others – is to ensure it is upheld while the business of running a complex set of processes continues in accordance with the public interest.

Where the concept of independence broadens beyond decision-making on cases, and matters such as judicial administration, to include more general considerations of how to manage a publicly-funded system, there can be risk to the public interest. Keeping information about each of the parts of the system in ‘silos’ means that getting to the bottom of puzzling, costly trends becomes very difficult. And independent efforts intended to improve access to justice, more efficient case management, and better outcomes, run the risk of working against each other.

Striking the right balance – being clear regarding the spirit and letter of independence, while acknowledging that we administer one system and are ultimately accountable to citizens to make best use of the available resources – is the key challenge for our system and the underlying theme of this Green Paper.

### 3. Why reform is needed

As British Columbians, we expect the decisions made and services provided by our justice system to be fair, timely, and transparent. We look to those who participate in managing the system – the judiciary, police, prosecutors, corrections, court staff, defence counsel and government – to ensure that the values of justice and safety have the broadest possible reach. We recognize that government has limited resources and many competing priorities, and cannot solve problems by simply adding more resources to maintain the way things are already done.

In the past decade, those working in the system have worked hard to adapt to new information, ideas and technology. Major improvements have been made to the way in which court, police, prosecution, and correctional data is captured and maintained. Judges, police, prosecutors, corrections staff and others have worked together on innovative ideas like community courts, streamlining case management, and tackling prolific offending. The ways in which offenders are managed are based on solid research.

However, we are now at a point where the positive changes under way may not be sufficiently bold. We may need to look harder at the way the justice system does business. As described further in this document, problems of cost and delay are appearing in the system in ways which are increasingly inexplicable and unacceptable. Action is required of British Columbians, their families and our economy rely on a sound system of justice.

#### 3.1 The justice system is important for families

Families rely on the justice system to resolve some of our greatest social challenges. Crime and victimization can have immeasurable harm on family life, harm that can repeat over generations. It is vital that the justice system is able to intervene in ways which best promote safety and provide real consequences for offending, but which also minimize unwanted or unintended harm to innocent third parties – victims, their families, and the families of accused and convicted persons.

Families also rely on the justice system to provide accessible, timely support and structure around personal challenges when people are most vulnerable, such as when marriages end or when children require protection.

#### 3.2 The justice system is important for jobs

While the criminal aspects of the justice system dominate the headlines, civil procedures share the same resources and available court time, and are impacted by the same trends of cost and delay. Our economy relies on our system of justice to regulate the basic rules of business. These include company law, the enforcement of contracts, hearings, and the resolution of those disputes called “small claims” but which matter to ordinary people. Timeliness in all these areas matters greatly to our ability to create employment, keep the playing field of business level, and resolve disputes at all levels in an impartial and enforceable manner.

#### 3.3 The justice system can be strengthened through transparency and open data

The justice system has many moving parts. If only a limited number of specialists understand how it works, British Columbia is at a disadvantage.

Increasing our comprehension of how it works, and how it may best uphold the safety, rights and values of British Columbians, is a permanent objective for those managing the system. It is critical that we take opportunities to make knowledge of the system more accessible. While protecting privacy, we must make

data about how the system is working available across the system. We have a responsibility to engage and empower the public through the provision of meaningful, timely information regarding how their system works.

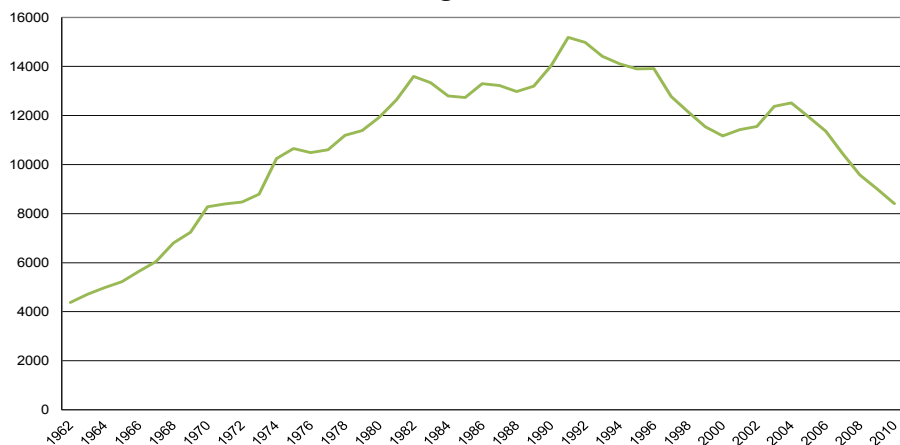
#### 4. The paradox: inputs are down, yet costs and delays are up

While the system's basics – its integrity, its personnel and its ability to innovate – remain strong, indicators of the system's performance and current health give a mixed and confusing message, particularly in the area of criminal justice.

Some indicators seem encouraging:

- **The crime rate is down sharply.** The rate and severity of crime in British Columbia, relative to provinces such as Ontario and Quebec, remain significantly high, and British Columbians' concern about crime in their communities reflects this. However, since 2004 *crime in British Columbia has declined consistently, and at a rate faster than any other province.* In 2010, the last full year for which data is available, crime stood at 8,404 recorded incidents per 100,000 residents (see **Figure 1**). This represents a drop of 33% in six years – and a drop of 45% from the all-time peak in 1991.

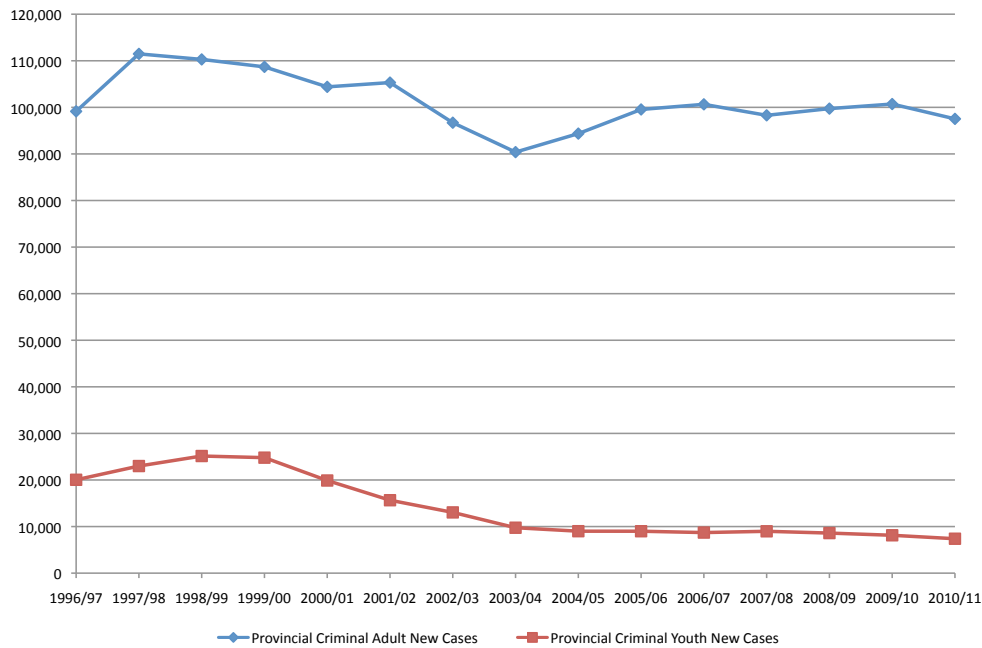
**Figure 1**  
**Crime in BC has been declining since 1991**  
CCC rate excluding traffic: BC 1962-2010



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

- **The criminal case load for the courts is stable or declining.** The number of new criminal cases in Provincial Court has been stable for a number of years. In the last two years, the number of new cases has declined (see **Figure 2**).

**Figure 2**  
**New Provincial Court Criminal Cases Per Year**



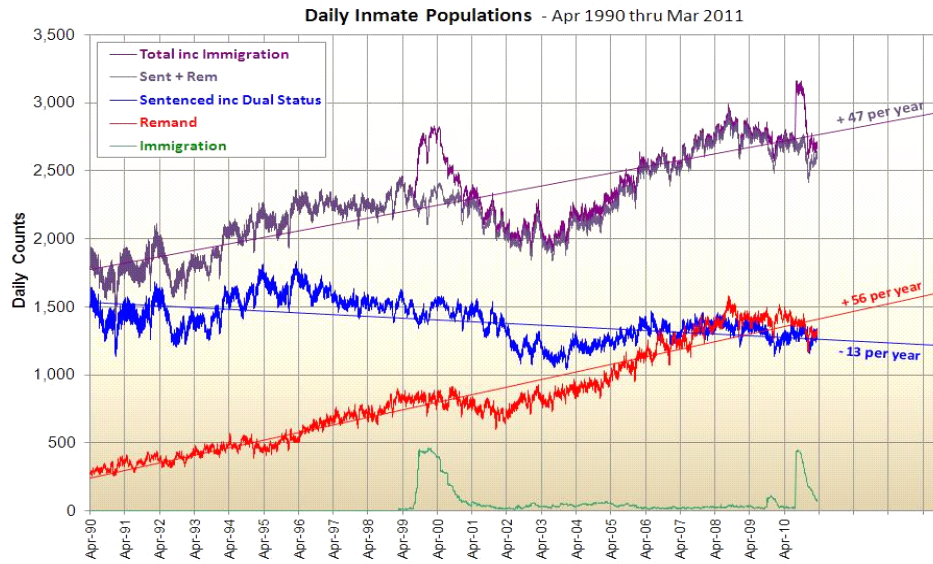
- **The yearly number of people sentenced to jail is falling** (see **Figure 3**, “sentenced incl. dual status”).

Viewing these trends in isolation, it would be reasonable to conclude that the “business” of the justice system – particularly in criminal justice – has become more manageable. There is less crime to respond to. There are fewer cases before the courts. There are fewer people being admitted every year for the prison system to manage.

Yet for those who work in the system, and for British Columbians observing the system, the benefits we might expect are not being realized. A number of other indicators suggest that despite the trends already noted, the system continues to slow down – and cost more. The system finds itself discussing, planning and building for more work, not less.

- **People are held awaiting trial much longer, increasing the remanded population.** While the annual number of accused persons remanded in custody (denied bail and held in jail) before trial is actually *declining*, the length of time they are staying in jail awaiting trial is *growing*. The surprising result is that despite fewer admissions, the overall jail population has grown consistently for two decades (see **Figure 3**). This growth is almost entirely associated with people awaiting trial – in other words, because of delays in cases being heard.

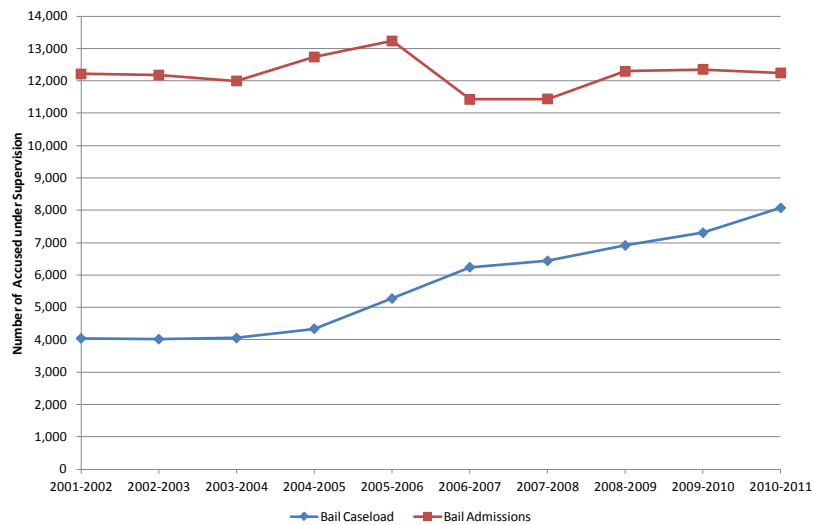
**Figure 3**



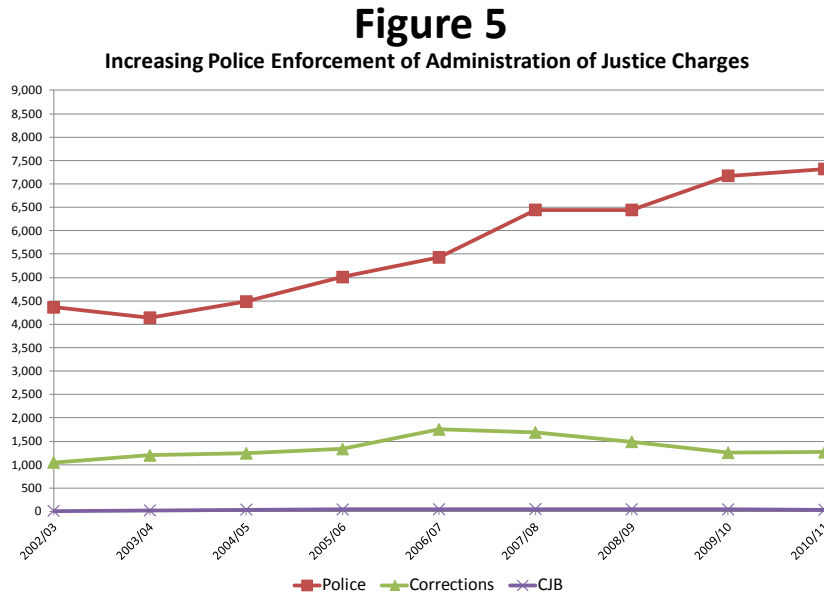
- People on bail await trial much longer.** The number of accused persons granted bail *annually* has changed very little in the past ten years. However, as with those denied bail and held in custody, they spend longer and longer awaiting a court date. Thus, despite no change in the numbers granted bail annually, the total bail population awaiting trial today is twice what it was a decade ago (see **Figure 4**).

**Figure 4**

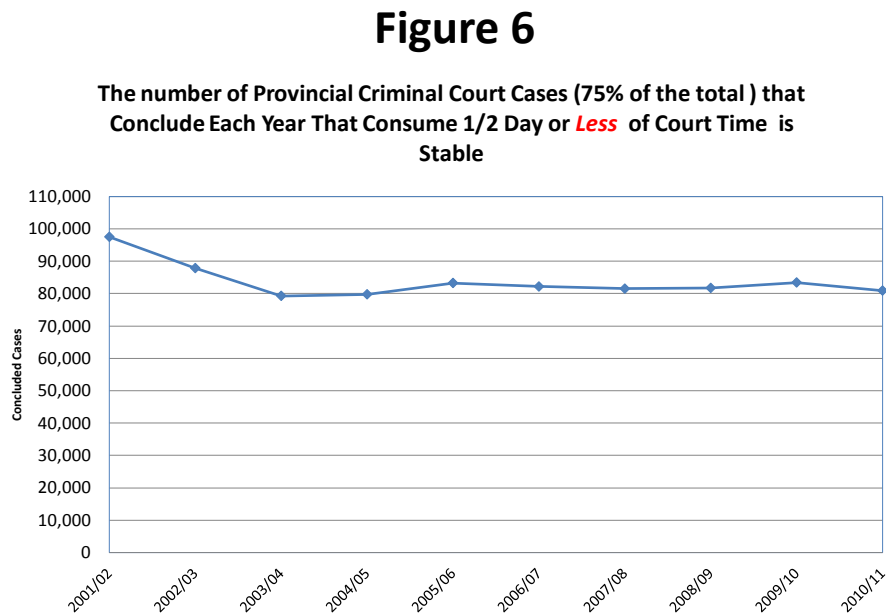
**Longer Periods of Bail Impact Supervision Workload**  
Admissions Flat - Caseload Doubles



- **Charges related to violations of court orders are growing.** Bail normally has conditions of behaviour attached. Human nature is such that the more time people spend out on bail, the more likely it is they will violate those conditions. This may be a contributing factor to the overall growth in charges now before the courts which are unrelated to the original criminal activity but stem instead from breaches of court-ordered conditions (see **Figure 5**).

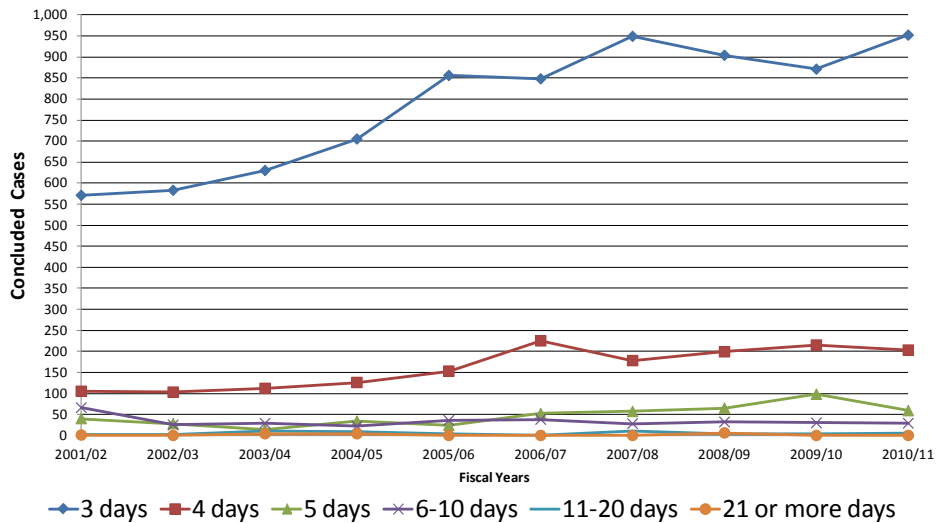


- **Most cases resolve quickly, but a small percentage are taking longer.** For the past eight years, the number of Provincial Court cases has been constant, and the Court has consistently moved three-quarters of all cases to conclusion within half a day (or less) of actual court time (see **Figure 6**). However, in that period the number of cases that take three or more days of court time – while a small percentage of the total – has increased by two thirds (see **Figure 7**).



### Figure 7

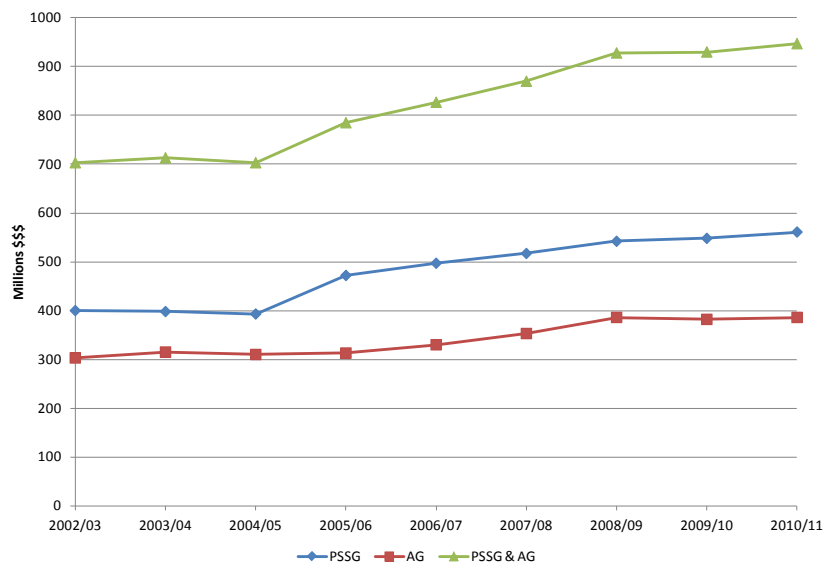
The # of Provincial Court Criminal Cases that Conclude Each Year that consume 3 or More days of Court Time is Increasing



- **The system is costing more in real terms every year.** After a period of stability, expenditures on adult criminal justice personnel and processes have risen significantly in the past six years, increasing by 35% (well above the rate of inflation) since 2005 (see **Figure 8**).

### Figure 8

Growth of BC Criminal Justice Expenditures



Again, the paradox for British Columbians is that in some respects the observable “business” of the system is down, but without corresponding improvements to the cost and efficiency of existing work. Getting to the bottom of this dilemma, identifying the key issues at play, and making appropriate changes is clearly in the public interest.



## 5. Barriers to problem-solving in the system

Our system clearly exhibits trends which should concern observers. Costs and delays are rising, despite a declining crime rate and no increase in case load. While these patterns are easy to observe, there is at present little consensus within the system as to why these problems are occurring, much less what we should do about them.

### 5.1 A complex system

The system is complex, and the reasons behind the negative patterns of cost and efficiency shown above are unlikely to be simple.

However, when we say the system is complex, we need to be clear what this means. The work can be complicated, but these skills are mastered by many, and the basic functions of the system are understood by citizens. Instead, we say the justice system is complex because of the huge range of factors that can affect justice outcomes and the way the system works, none of which is controlled from a single point. The most important of these are:

- The high volume of cases spanning many different kinds of crime or dispute
- The constitutionally-independent operations of the judiciary, police, Crown
- The long-standing, entrenched professional traditions within the system
- The broad range of work settings and professional training of the system's employees
- The central place of individual opinion (e.g. police, prosecutor, judge) in the outcomes of cases
- The intensity of public, government and media interest in justice system outcomes

In addition to these "fixed" characteristics of the justice system, there often occur other one-time changes that require adaptation.

For example, it is quite normal for there to be new rules in the system because of case law, rules which are binding and sometimes come from outside British Columbia. For instance, the Supreme Court of Canada case known as *R. v Stinchcombe* (1991) required police and Crown to make all information held in their investigation file available to the person accused of the crime. This decision brought criminal procedure in line with the *Charter of Rights*, but required significant and costly changes to the way information is recorded, stored, managed and shared between police, Crown, and defence.

Similarly, the decision some decades ago to return many psychiatric patients to the community rather than keep them in psychiatric hospitals was motivated by a desire to give people more control over their lives. However, it is apparent the result for police and the rest of the justice system has been a significant increase in public order issues (including criminal cases) where the underlying issues have perhaps more to do with mental health than crime. This in turn has required learning, training, new resources and innovation from the justice system -- a program of change which continues today.

Complexity is therefore the normal state of affairs in our justice system. The challenges of the next 10 years will be no less complex and potentially costly. Because of this, it is vital that we work together to understand and manage the system in ways that are as coordinated, as transparent, and as effective as possible.

## 5.2 Entrenched culture leads to many analyses and many solutions

There are numerous possible solutions to the issues of cost and delay which have been identified. These include but are not limited to streamlining charge approval, more efficient scheduling of court cases and use of judges' time, refining the emphasis on offenders' breach of court-ordered conditions, and more efficient handling of the largest, most expensive and complex cases.

To solve problems and improve performance in this or any publicly administered system, sound management requires four things to be commonly available across the system:

1. the *information* necessary to diagnose problems and recommend changes
2. the *skills* to identify root problems and propose effective solutions
3. the *capacity* to implement, sustain, monitor and evaluate improvements to the way we work
4. the *will* to examine traditional ways of conducting business with a critical eye.

Meaningful progress also requires recognition of the time required to achieve change and a commitment to stick with reforms. Rapid adoption of solutions in the absence of a clear understanding of the problem and realistic responses should be avoided.

Three enduring characteristics of the justice system's professional culture stand in the way of the required environment of shared management information, diagnostic skills and capacity to implement reforms. These characteristics, bound up with the traditions of the system, are impediments to our ability to describe, measure, diagnose and evaluate justice system performance in ways that meet the standards commonly applied to public institutions today.

### ***The interpretation of independence***

Key parts of the system are, as a part of the rule of law, operationally independent by law or under our constitution. But independence should not be used as a shield against scrutiny on issues related to public administration (for example, where business process improvements are needed). Overbroad concepts of independence make it harder to understand why process and other justice system inefficiencies occur. They can also limit accountability.

**Possible solution:** What is expected by the public, by government, and all other stakeholders of the system, is a model which preserves the essential operational independence of police, the judiciary, corrections, and Crown counsel in a way that respects that independence and discretion on a case-by-case basis while enabling a meaningful capacity to plan, implement and analyze justice system services.

### ***Underdeveloped systems thinking***

The daily work of the justice system relies on single-case precedents and on the facts and opinions offered by experts. The result is a culture that uses anecdote to advance discussion, may prefer expert opinion to measurement, fails to apply systems thinking, and sacrifices potential system-wide gains due to the risk of failure in a single instance. Perhaps as a consequence, a number of major reforms over many years across the justice system, while well-intentioned, lacked clear problem definitions and objective standards for success. The result is that it is hard to show how much progress has been made.

**Possible solution:** A process of operational review and reform could be implemented, to apply across the system, which places a high value on measurable progress linked to strategic goals. This process would build

on work already under way on management of the largest criminal cases. The establishment of performance metrics, and the sharing of targets and progress across the system, with government, and with citizens, would become central to system policy and practice.

### ***Dominance of operational practice in business analysis***

The system contains a set of distinct, strongly-defined careers in justice. As managers, representatives of these professions draw on an operational career, rather than one of business analysis and public administration. The tradition of senior subject-matter experts managing complex administrative systems can lead to conflicts in corporate direction, a bias towards tradition, and difficulty tackling broader administration questions within the system. It can also, for example, overemphasize an incident-focused criminal law lens on inter-related issues such as mental illness, youth disorder, and drug use, which may well be better dealt with through partnership with other branches of government.

**Possible solution:** Develop business analysis competence across the justice system as a complement to subject-matter expertise. Apply business analysis, in addition to operational experience, to any project concerning volume or efficiency.

## **6. Other possible areas of reform within the system**

As stated elsewhere in this Green Paper, even if the trends confronting us are plain, the answers are not. Our next steps will depend on the outcome of a review of the justice system, consistent with this Green Paper, as well as contributions from the public, employees and others. However, as we begin broader discussion it is useful to identify at this stage examples where our work within the justice system is already pointing to places where change may be required.

A list of issue areas where analysis of justice suggests improvements may be made (*Ten Challenges, Ten Proposals*) is appended to this document (Appendix One). Summarized here, these issue areas include:

- ***Minimizing variation in standard practices.*** For example, there is variation in the rate at which lower-risk offenders are referred to alternative measures rather than a criminal trial. Work is required to improve consistency and efficiency while, as always, respecting prosecutorial discretion case-by-case.
- ***Improving the way goals of reform are made clear and progress is measured.*** A number of major reforms over many years across the criminal justice system, while well-intentioned, lacked clear problem definitions and objective standards for success. The result is that it is hard to show how much progress has been made. There is a strong case for better standards in this area.
- ***Recognizing the system has complex processes, build business analysis techniques into management of operations.*** Building on work under way on management of the largest criminal cases, there is a clear need for a reform process which is measurable and strategic as opposed to single-issue focused, and which relies on business techniques as well as knowledge of the law.
- ***Addressing scheduling problems.*** Scheduling of trials & appearances is uncertain and creates delays and costs for police, counsel, and other participants. Unpredictable bail hearings divert resources from previously scheduled matters.

- **Addressing Crown case management.** Current practices increase the chances of one file passing through many hands, adding unnecessary delay and increasing the likelihood of extra court appearances.
- **Addressing judicial case management.** Despite efforts to empower judges to expedite trials through more direct management, purely administrative appearances have grown in recent years.
- **Improving representation of accused persons.** Duty counsel and defence lawyers are often retained for the same matter at different stages. There may also be delays in approval of legal aid referrals, increasing redundant representation.
- **Improving resolution rate of Small Claims.** Despite introduction of mandatory mediation, significantly less than half of the cases that go through this process resolve there and the rest end up in a court hearing.
- **Addressing court-based behaviour management of lower-risk offenders.** Criminal law provides for lower-risk accused persons to be diverted to other options short of a criminal trial ("alternative measures"). These provisions appear to remain under-used. Meanwhile, there is significant growth in charges regarding violations of court-ordered conditions. The result appears to be a system attempting to control accused persons' behaviour by court order when many lower-risk individuals might have been diverted earlier from the courts to more effective measures that protect public safety and reduce recidivism.

## 7. Steps to reform

Moving to an inclusive discussion and action on reform involves: (a) recognizing the work already occurring, (b) tackling the bigger questions of how the system functions, and (c) balancing the views of system experts with insights from external observers and the public.

### 7.1 Changes are already underway

The government and others who administer the justice system have been engaged actively in addressing challenges within the system. Significant work is underway now, or has recently been completed, to make improvements, gain more understanding, and enhance services to citizens. Examples include:

- The Premier's direction for government to engage in a Public Engagement on Policing in 2012
- Assertive movement on the provision of open data, through DataBC and the JusticeBC web portal. Significant information has already been made available regarding the work of the courts and regarding the corrections population. MAG and PSSG recognize the need for openness as a key enabler of justice reform. When the public is better informed about the system, the impact on new ideas and reform considerations can only be positive. 2012-13 will see the proactive release of substantial amounts of new justice system data into the public domain.
- The Legal Services Society (LSS) has a statutory role to provide advice to the Attorney General on legal aid and access to justice. The Attorney General has asked LSS for advice on efficiencies that could be achieved within the current legal aid funding envelope and ways that savings generated in the justice system through changes to legal aid could thus be made available for reallocation to legal aid or other justice system needs.

- A review of British Columbia's system for approval of prosecutions. Most other provinces do not involve Crown counsel in approving charges before they are formally laid. The relative merits of the various systems are to be considered, including whether the pre-charge review by Crown counsel should be maintained and, if so, whether improvements can be made to the system.
- The continuation in 2012-2013 of a justice-system-wide business intelligence project that commenced in 2011, to allow information from across the system to be compared and analyzed in a common framework. This will support performance measurement and management in the system.
- The establishment in 2011 of an integrated planning secretariat across MAG and PSSG, the work of which includes the current development of coordinated strategic plans for both Ministries and the justice sector as a whole, along with an associated performance framework.
- The *Family Law Act*, promoting out-of-court options to better serve families and making the interests of the child the only consideration when decisions affecting the child are made.
- Work now under way on alternatives to court-based adjudication of certain civil disputes, with a view to freeing judicial resources for more serious matters, such as criminal and family law matters.

## 7.2 Recognizing the need to look harder at how we do business

Notwithstanding these positive changes, we cannot continue doing business as before when some of the most basic indicators of the system are heading in directions that are hard to explain.

The challenge before the system and its stakeholders, participants, management and employees is to preserve the vital attribute of independent decision making across the breadth of the system, while requiring the system to be understood and improved in a coordinated way. The proposed solutions outlined above are no more than proposals. In order to reach an appropriate, well-supported and well-informed strategy to reform the justice system, three important and parallel processes must occur.

We must find a framework in which independent participants can have a common dialogue and create a shared understanding of how the system functions, its strengths, and its challenges. This is both obvious and difficult, due to the broad range of functions, training, experience, and traditions across the sector, the necessary safeguards, and the high stakes of personal liberty and public safety with which justice personnel deal every day.

The way forward requires a careful balance between the collective need to understand how the system functions and the preservation at all times of the independence of standing and decision-making which applies to some of the system's participants.

### ***Review of justice reform considerations***

At times when the system or its components must seriously consider reform, outside perspectives are vital. The 1998 *Independent Review Committee on Organized Crime* ("Owen Report") made an important and lasting contribution to the way in which British Columbia tackles organized crime. Ontario's *Review Of Large And Complex Criminal Case Procedures* ('Code-Lesage Report') of 2008 has had an impact on the way changes to Canadian disclosure law are understood by police, Crown and the courts.

This Green Paper proposes a short-term review, completed before July 1, 2012, to identify practical ways to promote continuous improvement within British Columbia's justice system. The review is to be carried out by a senior, respected person who participates directly in the administration of justice in British Columbia. The

reviewer would not come from one of the province's criminal justice participants, thus allowing for an objective view that does not approach the task from any particular criminal justice perspective.

The review will not be designed to deliver short-term answers on how to fix immediate challenges in the system. Rather, the review will be focused on what structural or institutional changes should be made to enable the system to work together and make improvements, in ways that are constitutionally appropriate.

The mandate of the individual appointed to conduct the review will be to report and make recommendations on:

- the most appropriate ways to safeguard independent decision-making authority within the system;
- the most appropriate ways to safeguard and allocate financial decision-making authority;
- the need for consultation with other participants regarding independence and best expenditures;
- the areas in which justice agencies should have shared or collaborative decision-making authority;
- practical and effective means by which consultation and shared decision-making can best take place; and
- the steps, including legislation if any, within the constitutional authority of the province that would be needed to implement the recommendations.

### ***Engagement with stakeholders and the public***

The review is one step towards changes which may be necessary. Another equally important step is to hear from British Columbians themselves. This includes individuals and families who rely on the system to keep them safe and reach fair and timely resolutions to disputes, as well as business, labour, and other stakeholders who rely on timely, consistent and accessible services regarding regulations and contracts.

This Green Paper will be posted to the government of British Columbia internet site and on the JusticeBC website. Comments are welcome, and the government will report back periodically throughout the reform period and in the preparation of a White Paper with updates and to pose specific questions to the public as they emerge from our work.

## **8. Further action – White Paper on Justice Reform**

Upon receipt of the review report, and conclusion of consultations in July, immediate consideration of the recommendations involving engagement with all key stakeholders will commence, along with development of a concrete plan of action.

Contingent on the recommendations within the Review, the government anticipates the distribution of a White Paper on Justice Reform in September 2012. The White Paper will identify specific steps to be taken, including if required a plan for legislative change.

## Appendix

### Justice Reform: Ten Challenges, Ten Proposals

A well-functioning justice system is important for democracy. British Columbians look to those who manage the system to ensure that the values of justice and safety are paramount; but today, these values are at risk. The reasons are complex and the picture is confusing. Costs and delays are rising despite a declining crime rate and stable case intake.

Government is engaging in active consultation on next steps for justice reform, including an external Review of the system with respect to a reform agenda, and is seeking feedback from stakeholders and citizens. In that context and as part of the discussion, it is useful to highlight areas where analysis within the system suggests it may be useful to focus our efforts.

To understand and reform the system we must give priority to tackling three major challenges:

- Key aspects of the system's organizational culture;
- Its major inefficiencies; and
- A number of established but likely ineffective approaches.

These issues and associated examples are stated below in plain terms. They are in most cases complicated, and many are linked in important respects to the culture and traditions of the system. Meaningful progress requires commitment to clear definition and understanding of the nature and scope of the problems and then measurement of progress in reforms. It also requires recognition of the time required to achieve change and a commitment to stick with reforms. Rapid adoption of solutions in the absence of a clear understanding of the problem and realistic responses should be avoided.

**Bottom line: Quick fixes will not work. Real change will take careful, data-driven analysis of problems, diligent planning of feasible solutions in response and, above all, commitment and time.**

#### A. JUSTICE SYSTEM CULTURE

*Justice reform involves addressing three cultural aspects of the system in BC:*

- how independence is interpreted,
- resistance to systems thinking, and
- practitioner-dominated management.

**Challenge One: The Interpretation of Independence.** Key parts of the system are, as a part of the rule of law, operationally independent by law. But independence should not be used as a shield against scrutiny on issues related to public administration (for example, where business process improvements are needed). Overbroad concepts of independence that serve no real legal make it harder to understand why process and other justice system inefficiencies occur. It also limits accountability.

**Example:** Patterns within Crown counsel offices' activity show wide variation on things like the:

- use of guilty pleas to lesser offences as a way of resolving drinking-driving cases, and
- rate at which lower-risk offenders are referred to alternative measures rather than a criminal trial.

**Proposal:** Establish a clear understanding of the scope and limits of operational independence of police, the judiciary, corrections, and crown counsel in a way that respects that independence while enabling a meaningful capacity to plan, implement and analyze justice system services. Crown counsel policy would be reviewed with the goal of improving consistency and efficiency while, as always, respecting prosecutorial discretion case-by-case.

**Challenge Two: Resistance to Systems Thinking.** The work of the justice system relies on single-case precedents and on the facts and opinions offered by experts in unique circumstances. The result is a culture that fosters to:

- anecdotal problem-solving,
- a preference for expert opinion over measurement,
- failure to apply systems thinking, and
- sacrificing of system-wide benefits for fear of failure in a single instance.

**Example:** A number of major reforms over many years across the criminal justice system, while well-intentioned, lacked clear problem definitions and objective standards for success. The result is that it is hard to show how much progress has been made.

**Proposal:** Building on work under way on management of the largest criminal cases, create a reform process, applicable across the system, which places measurable progress and links to strategic goals at the centre of change initiatives.

**Challenge Three: Dominance of Operational Practice in Business Analysis.** The system contains a set of strongly-defined professions. The expertise brought to bear by managers when confronting systemic problems is often that of a front-line operational career, rather than one of business analysis and public administration. The tradition of senior subject-matter experts managing complex administrative systems can lead to conflicts in corporate direction, a bias towards tradition, and difficulty in the analysis and management of more generic operational problems of the system. It can also, for example, overemphasize an incident-focused criminal law lens on inter-related issues such as mental illness, youth disorder, and drug use, which may well be better dealt with through partnership with other branches of government.

**Example:** Judicial case management rules in the Provincial Court require extra steps for all cases instead of using a risk management approach to focus extra supervision on the 20% of cases needing additional attention. The preference for using formal court appearances to manage trials has been one factor leading to a doubling of the bail population and may have contributed to an increased number of 'administration of justice' charges such as breach of bail conditions and failing to appear in court.

**Proposal:** Develop business analysis competence across the justice system as a complement to subject-matter expertise. Apply business analysis, in addition to operational experience, to any project concerning volume or efficiency.



## B. INEFFICIENT SYSTEM MANAGEMENT

*The system has several inefficiencies immune to more tentative reform.*

**Challenge Four: Scheduling Problems.** Scheduling of trials & appearances is uncertain and creates delays and costs for police, counsel, and other participants. Unpredictable bail hearings divert resources from previously scheduled matters.

**Example:** Nearly half of criminal court cases are resolved at the first trial appearance either by a guilty plea or the Crown staying the charge. Criminal cases average 6 appearances in court, but only some of those need to be in a courtroom (such as appearances for a contested bail hearings; entering of plea; pre-trial applications involving evidence; attendance for preliminary hearing or trial; and imposing sentence). In most courthouses an appearance can only re-scheduled in a courtroom before a judge.

**Proposal:** Develop and implement a new model of scheduling and proactive management of trial appearances in Provincial Court, focused on identifying more direct routes to early resolution where possible.

**Challenge Five: Crown Case Management.** Current practices for assigning Crown counsel to charge approval and early case management, and Crown management of cases between arraignment and trial, may result in the use of court dates as a bring-forward system as opposed to a focal point for preparedness. Similar use of court dates by defence counsel may raise similar challenges.

**Example:** One duty Crown Counsel attends all pre-trial appearances on any day. As most files have multiple pre-trial appearances, 3 to 5 Crown may speak to the case in court, and interact with defence counsel, over the life of the file.

**Proposal:** Take steps to improve continuity of Crown assigned to a file. Rather than have mandatory pre-trial appearances increase the likelihood that management of the file transfers multiple times, consider delaying appearances until permanent Crown is assigned and has agreed with defence that the matter is ready to proceed.

**Challenge Six: Judicial Case Management.** Despite efforts to empower judges to expedite trials through more direct management, purely administrative appearances have grown in recent years. Also, insistence on in-person appearances and limited enforcement of time standards may contribute to costs and delays.

**Example:** As judges are required to enforce the case-time processing standards one case at a time, there is inherent susceptibility to arguments favouring the need for more time. Without a systemic approach, time management can only progress at the case-by-case level and is unlikely to bear fruit notwithstanding good faith efforts.

**Proposal:** Narrow the focus to allow stronger intervention in fewer cases, such as cases which do not resolve in the first 90 days. Amend judicial case management approaches to incorporate greater levels of baseline and outcome measurement.

**Challenge Seven: Representation of Accused Persons.** Duty counsel and defence lawyers are often retained for the same matter at different stages. There may also be delays in approval of legal aid certificates, increasing redundant representation.

**Example:** In some locations, duty counsel is available to advise accused at their bail appearance on weekends. However, review shows that weekend duty counsel has not resulted in reduced number of appearances the following week.

**Proposal:** Examine the performance of the duty counsel program against its originally-stated goals.

### C. PROCESSES THAT DON'T WORK/HAVE UNINTENDED CONSEQUENCES

*The system is committed to several processes and tendencies which appear to be inefficient, but which are difficult to dislodge.*

**Challenge Eight: Non-resolution of Small Claims.** Despite introduction of mandatory mediation, significantly less than half of the cases that go through this process resolve there and the rest end up in a court hearing

**Example:** To speed resolution and improve trial preparation, a settlement conference before a judge must be scheduled for most claims before it can be scheduled for trial. Judicial mediation resolves about 35% of cases but delays trial scheduling for the unresolved 65%. Cost of court time for claims often exceeds the claim value.

**Proposal:** Solving private disputes with little monetary value and no substantive issues could be greatly simplified with summary paper trials and mandatory private mediation for larger claims. Explore creation of a civil disputes resolution tribunal to move appropriate cases from court to tribunal.

**Challenge Nine: Charge Approval.** The rejection rate for police-submitted charge recommendations to Crown generates significant administration costs to both parties. Despite the level of current co-ordination between the Crown and police, there continue to be multiple rewrites or investigations that are unlikely to see successful prosecution..

**Example:** Thirty percent of reports to Crown are not approved on the first review. While many are rejected due to insufficient evidence relating to the recommended charges, in other instances this may be due to a variable Crown standard which police must meet.

**Proposal:** The approval process, whether held by Crown or police, should influence the quality of information available to the court, and minimize wasted effort of investigators and prosecutors. In addition to planned improvements to disclosure practice, regular tracking, reporting and process analysis within JUSTIN should identify the frequency of and reasons for rejection of police recommendations, informing policy and police-Crown training.

**Challenge Ten: Court-Based Behaviour Management of Lower-Risk Offenders.** Criminal law provides for lower-risk accused persons to be diverted to other options short of a criminal trial (“alternative measures”). These provisions appear to remain under-used. Meanwhile, there is significant growth in charges regarding violations of court-ordered conditions. The result appears to be a system attempting to control accused persons’ behaviour by court order when many lower-risk individuals might have been diverted earlier from the courts to more effective measures that protect public safety and reduce recidivism.

**Example:** Referral of offenders to alternative measures varies based on local Crown office practices. In addition, police and corrections make different recommendations regarding alternative measures and enforcement strategies for breaching sentences such as probation are not aligned (for example, corrections recommends fewer charges for breach of probation while police recommend more).

**Proposal:** Offender management requires a consistent approach to alternative measures and breach of conditions across the system, based on risk management and public safety goals. Increasing the number of lower-risk alternative measures referrals would create additional capacity for all aspects of the justice sector, while not negatively impacting public safety in a meaningful way.









# Modernizing British Columbia's Justice System

Minister of Justice and Attorney General

