

**Championing Positive Change:  
Findings of the Review of  
The BC Prosecution Service**

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## TABLE OF CONTENTS

BACKGROUND .....	2
Why Conduct a Review of the BC Prosecution Service?.....	2
Scope of the Review.....	3
Approach .....	4
Key Findings and Recommendations.....	5
I. THE BRANCH AND ITS WORK: A BRIEF OVERVIEW .....	8
II. EXPERIENCE IN OTHER PROSECUTION SERVICES: A BRIEF SCAN .....	10
III. THE CJB'S STRONG TRACK RECORD IN INNOVATION / CONTINUOUS IMPROVEMENT.....	13
Strategic Planning and Wise Goals.....	13
Greater Transparency.....	14
Innovations that have Improved Efficiency.....	14
IV. OPPORTUNITIES TO ENHANCE INNOVATION, EFFICIENCY AND EFFECTIVENESS.....	18
Focus Attention and Resources on Disclosure .....	18
Make Effective Use of Technology .....	18
Improve Timelines and Efficiency.....	21
Extend the Major Case Management Approach.....	22
Use a Consistent Approach to Measure Complexity .....	23
Develop New or Revisit Existing Policies Related to Indigenous Peoples, Mental Health, Alternative Measures, Domestic Violence and Administration of Justice Offences.....	24
Enhance Collaboration .....	27
Continue to Engage and Support the Workforce.....	30
Compensation and Performance.....	34
Make Informed Decisions about Resource Allocation .....	36
V. CONCLUSION.....	38
Appendix A: Survey Questions.....	40

## BACKGROUND

### Why Conduct a Review of the BC Prosecution Service?

Over the last five years, the BC Prosecution Service, Criminal Justice Branch (CJB) has been on a continuous journey to improve its operations. Its commitment to innovation is due in part to its desire to ensure quality service and reduce inefficiencies and delays. It is also driven, in part, by budget pressures that require all publicly funded services to operate lean.

In response to the government's 2012 Justice Reform Initiative<sup>1</sup>, the CJB has already implemented many proposed reforms. In recognition of these reform efforts, the Ministry of Justice strongly advocated for an increase to the CJB's budget in fiscal 2016/17 to permit it to fund its

The CJB wanted to be informed about other prosecution models, innovative systems that have been employed for those models, and lessons learned. It wanted to know if it was looking at the right things and proceeding at the right pace.

mainstay operational requirements out of base funding, including the annual increases under its agreements with the BC Government Employees Union (BCGEU) for support staff and with the BC Crown Counsel Association (BCCCA) for legal counsel<sup>2</sup>. However, government and the Ministry expected the reforms to continue. As the Assistant Deputy Attorney General (ADAG) indicated in March of 2016<sup>3</sup>:

“... the fact that we obtained budget relief for 2016/17 does not mean we can stop trying to improve. On the contrary, as we have already made clear through our reform initiatives, we must continue to reflect, be prepared to revisit the way we conduct our business, and make thoughtful and informed improvements to service delivery where warranted...”

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<sup>1</sup> A Criminal Justice System for the 21<sup>st</sup> Century. Final Report, August 27, 2012. BC Justice Reform Initiative. D. Geoffrey Cowper, Q.C., Chair.

<sup>2</sup> In the three previous years, the CJB did not receive full funding to cover the annual increases under its two collective agreements and had to find efficiencies within its operations. In addition to its 2016/17 base budget funding, CJB has received notional approval to access contingencies for Major Case pressures.

<sup>3</sup> Memorandum to the CJB from the ADAG March 7, 2016.

## Scope of the Review

As “one part of the Branch’s commitment to continuous improvement,”<sup>4</sup> this past spring the CJB asked me to conduct a review of its efficiency, approaches to transformation and collaborative practices. I was also asked to compare its current initiatives with promising practices in similar jurisdictions, especially across Canada and in Australia, England and New Zealand, that might benefit British Columbia. I was expected to comment on the pace of change, identify any work that did not appear sound and make recommendations to enhance the CJB’s transformation.

To support my review, CJB gave me free access to the Branch, its staff and its non-case materials. My task consisted of:

- a review of publicly available material from the Ministry of the Attorney General website and websites of other related justice participants including Court Services, the judiciary and the police
- a review of materials, including reports, provided by the CJB
- a survey of Canadian prosecution services. Through the good offices of Ms. Joyce DeWitt-Van Oosten, Q.C., the Assistant Deputy Attorney General – Criminal Justice Branch, a survey was prepared and circulated to her colleagues at the Heads of Prosecution (HOP), a federal-provincial-territorial table comprised of all Canadian prosecution services. Every participant in that body completed the survey, and that information proved very helpful. (For a copy of the survey, see Appendix A.)
- a review of prosecution service practices in other jurisdictions, such as Australia, England and the UK
- fact-finding meetings with the Attorney General, the Deputy Attorney General and the Assistant Deputy Attorney General. Those meetings were very instructive.
- a series of discussions with CJB management, program heads, professional staff at differing levels of seniority and support staff
- a meeting with the head of the BC Crown Counsel association and interviews with key personnel from front-line prosecutions, specialized prosecutions and appeals, policy, business and technology

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<sup>4</sup> Ibid.

- meetings with key leaders from Court Services Branch, Justice Services Branch, Legal Services Society, Victims Services Division and policing
- a meeting with the Associate Chief Justice of the Supreme Court and the Chief Judge of the Provincial Court.

## **Approach**

I approached each person or group with similar questions. I was seeking input about what was working and what was not. I was looking for suggestions on how to improve. In addition to in-person meetings in British Columbia, I conducted some follow-up telephone interviews related to some discrete areas such as mental health and technology.

To a person, everyone I met and spoke with was generous and forthcoming. The CJB staff members who assisted me were unfailingly helpful and accommodating. I am very grateful for the assistance I received.

In my experience, prosecution services are often painted with a broad brush as organizations that are aloof, costly and resistant to change. The sense that prosecution services are aloof no doubt stems from their absolute need to promote independence. Society depends on the prosecutorial function to be absolutely devoid of political influence or favouritism. The sense that the system is too costly stems from concerns about efficiency and delays as well as the compensation scheme for Crown Counsel. While compensation for government lawyers will never be on par with the private sector, compensation for professionals within government must be high enough to attract talented individuals. In the criminal prosecution service, prosecutors are called upon to make decisions critical to the public interest affecting the rights and liberty of citizens. We expect care, craft, courtesy, and correctness – and to attract and retain skilled professionals there must be adequate compensation.

The assumption that prosecution services resist change may be related to the fact that, years ago, these services were insular. However, today, there is growing recognition that the justice system, comprised of a number of independent actors, operates best when it finds appropriate solutions that work for all participants. **Working together, the system can improve access to justice while keeping costs down.** Innovative and cost-effective solutions must be found to address new developments and new challenges. Effective measures need be taken to address public safety and increase public confidence in the administration of justice.

It was clear from my review that the literature does not identify the hallmarks of a mature prosecution system. Even the International Association of Prosecutors, an esteemed worldwide organization, for example, does not address this issue. Given that there is no description of the “ideal” prosecution service that I could compare CJB to or use to assess its health, I had to focus on the Branch itself. What are its goals? How do they live up to what is being promised? Are there core values guiding the task? Is there a commitment to continuous improvement? What do the persons working within the Branch say? What about other key participants in the justice system? How is the service doing in relation to other prosecution services? Could more be done? How is the service responding to previous reports that have set out a pathway?

### **Key Findings and Recommendations**

After looking across prosecution services within and outside Canada, I have concluded that the BC Prosecution Service, delivered through the Criminal Justice Branch, is a highly functioning, committed and exemplary service. It has a thoughtful, reflective and planned approach. It is strongly committed to moving forward. It is at the top of prosecution services in relation to innovation, collaboration, communication, efficiency and continuous improvement. All of this has been achieved while managing caseloads that are trending upward and delivering on its promise to citizens to provide a fair, ethical, consistent, impartial, high quality service that has public safety and the public interest top of mind.

That being said, there are several key steps the CJB could and should take to engage staff, strengthen its structure, operate more efficiently and allocate resources effectively.

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#### **Focus attention and resources on disclosure**

*Recommendation #1:* Reassess the staffing and funding required for the Comprehensive Disclosure Project.

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#### **Make effective use of technology**

*Recommendation #2:* Redouble the efforts by the Court Services Branch and the Criminal Justice Branch to work together to address the issue of in-court technology.

*Recommendation #3:* Review with police the variable technologies and approaches used within the police community to gather information and share it with the Prosecution Service for the purpose of charge assessment. Identify common standards and clear business rules.

*Recommendation #4:* Focus the Comprehensive Disclosure Strategy on selecting a comprehensive case management system.

*Recommendation #5:* Explore alternative platforms for the Branch’s Intranet including a review of the E-library approach adopted by Ontario.

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**Improve timelines and efficiency**

*Recommendation #6:* Ensure CJB has adequate resources – including technological and paralegal resources – to ensure that time to trial is respected while also supporting the transformational work required to implement the Comprehensive Disclosure Strategy.

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**Extend the Major Case Management approach**

*Recommendation #7:* Apply the CJB Major Case Management approach to a larger number of cases.

*Recommendation #8:* Start now to consistently track near-Major or large cases.

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**Use a consistent approach to measure complexity**

*Recommendation #9:* Implement a simple consistent approach to measuring case complexity.

*Recommendation #10:* Work with Heads of Prosecution partners to see if there are any benefits emanating from current approaches to measure complexity.

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**Develop new or revisit existing policies related to Indigenous Peoples, mental health, alternative measures, domestic violence and administration of justice offences**

*Recommendation #11:* Advance a self-standing prosecution policy related to Indigenous peoples.

*Recommendation #12:* Create a stand-alone prosecution policy to speak to the entire Branch and the public on mental health.

*Recommendation #13:* Appoint a lead on mental health.

*Recommendation #14:* Review existing policies to ensure alternative measures are available for low risk cases where some lesser degree of treatment or assistance is warranted.

*Recommendation #15:* Develop a prosecution policy that will capture best practices in responding to domestic violence.

*Recommendation #16:* Study the causes of the growing number of administration of justice breach charges.

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**Enhance collaboration**

*Recommendation #17:* Improve communication between CJB and Victims Services Division.

*Recommendation #18:* Work with the Justice Services Branch to identify large cases about to enter the system earlier.

*Recommendation #19:* In consultation with the Justice Services Branch and Legal Services Society, identify disincentives to early resolution in the legal aid compensation scheme.

*Recommendation #20:* Conduct regular regional and/or provincial forums with defence counsel to inform best practices.

*Recommendation #21:* Ensure investigators have appropriate access to advice from Crown Counsel on more complex cases.

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### **Continue to engage and support the workforce**

*Recommendation #22:* Conduct an in-depth staff consultation on continuous improvement.

*Recommendation #23:* Review the role of Administrative Crown Counsel to clarify, acknowledge and support work expectations.

*Recommendation #24:* Clarify the role of paralegals and make greater use of their skills.

*Recommendation #25:* Provide leadership in career and succession planning.

*Recommendation #26:* Create virtual committees of staff – organized by small, medium and large offices – to develop consistent best practices for their work settings.

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### **Compensation and performance**

*Recommendation #27:* Develop programs to assist senior legal staff with retirement planning and provide options for staged retirement.

*Recommendation #28:* Develop programs and strategies to address a potential knowledge gap.

*Recommendation #29:* Emphasize sound performance management.

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### **Make informed decisions about resource allocation**

*Recommendation #30:* Conduct a support staff workload project to assess regional and local resource needs.

*Recommendation #31:* Once work is underway on measuring complexity of cases, undertake a workload study for Crown Counsel in the field.

*Recommendation #32:* Establish a dedicated surge capacity to backfill positions.



## I. THE BRANCH AND ITS WORK: A BRIEF OVERVIEW

The Criminal Justice Branch, which is governed by the *Crown Counsel Act* (1991), is comprised of Crown Counsel, legal assistants and persons in administrative or management positions. It has approximately 850 employees including about 480 prosecutors (inclusive of Legal Counsel managers and part-time prosecutors). The ADAG, who is the head of the BC Prosecution Service, is based in Victoria along with various business supports. There are 37 trial offices in five separate regions of the Province. There are also litigation offices in Victoria and Vancouver for appeals, special prosecutions and the provision of prosecution support.

**The BC Prosecution Service has a long and distinguished history.** The CJB conducts about 85% of the cases within the Province<sup>5</sup>. At any given time it has 20,000 to 30,000 active files before the courts. Ninety percent of the work is in the Provincial Court. Over 90% of the work gets resolved without a trial<sup>6</sup>. In rare cases, the Attorney General or the Deputy Attorney General may provide instructions on a particular case that need be gazetted. In cases where there is a perceived conflict, the ADAG may retain outside counsel to assume carriage of the prosecution (Special Prosecutors).

**Demand for the CJB's services is on the rise.** Recent trends show that, in 2015/16, there were:

- 69,264 Reports to Crown Counsel<sup>7</sup> (RCCs) in 2015/16 – up 5.4% from the previous year
- 72,967 accused persons named in the RCC's – up 5.7% from the previous year
- 61,412 accused persons with charges approved to court - up 6.2% from the previous year.

Despite reports that the crime rate is dropping, the number of active files<sup>8</sup> in the system has been growing over recent years. But so is efficiency. In 2015/16, the CJB increased the number of concluded files by 5.6%. The median time from charge approval to disposition was down 7% in 2015/16 from the year before. The percentage of files that are resolved at or before arraignment continues to improve, climbing from 66.1% to 69.2% to 73.4% in the last three years.

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<sup>5</sup> The remainder is overseen by the federal prosecution service, the Public Prosecution Service of Canada, whose responsibilities include drugs and income tax.

<sup>6</sup> These figures are comparable to activity in all Canadian jurisdictions.

<sup>7</sup> Reports by police of possible crimes warranting consideration of charge assessment by Crown Counsel. The number of RCCs is solely within the control of the police or other investigative agencies that submit RCCs to the CJB.

<sup>8</sup> A “file” means the number of accused persons on matters that concluded before the courts in the fiscal year.

As a result of the Immediate Roadside Prohibition program started in September 2010, British Columbia saw a precipitous and steady decline in impaired driving–related RCCs from 2010 to fiscal 2013/14 – although the number of all RCCs has begun to rise since then. Much of the recent growth in RCCs and the CJB’s workload pressures can be attributed to:

- the increase in domestic violence RCCs which are up 19.3% in the last six years and represent more than one in five RCCs (22.31%) received by the CJB
- the focus on administration of justice offences, which has also grown by 12.7% in recent years and is the fastest growing category of offences<sup>9</sup>
- the increasing complexity of cases – due to new legal requirements including the demands of disclosure and production, the reality of dealing with organized crime and organized gangs, the use of technology by criminals and intra-jurisdictional crime.

The task of investigating and prosecuting crime is becoming ever more challenging. A prosecution service faces steady, increasing file volumes that demand ongoing attention. The constitutionally required processes can be unpredictable, lengthy and cumbersome. Over the last decade legislative change beyond provincial control has added new expectations, requirements and complexity.

In the midst of these challenges, there is greater appetite for effective intervention and less tolerance for the time it takes to get there. There is a strong interest in improving processes but little ability to add resources.

Within the CJB, so much effort goes into tending to the large caseload, there is limited capacity to lead change or improve processes. Change also requires co-operation among multiple and independent stakeholders. Despite these pressures, the CJB has done a remarkable job. It is a credit to strong management and staff – both legal and non-legal – who have thrown everything they have at their work, enhancing innovation, collaboration and efficiency, while delivering the high quality of service the public expects.

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<sup>9</sup> For example, fail to appear in court, breach of bail and breach of probation.

## II. EXPERIENCE IN OTHER PROSECUTION SERVICES: A BRIEF SCAN

Part of my work was to identify the state of play in other like jurisdictions – both within and outside Canada. The Heads of Prosecution in Canada – which include federal-provincial-territorial prosecution services and the military – participated in a survey (see Appendix A). Not surprisingly, every jurisdiction in the collegial body submitted a response.

Based on that information and selective follow-up with some jurisdictions as well as my review of prosecution practices in Australia, England and New Zealand, my conclusion is that **British Columbia is a champion of change**. There are few new ideas out there and few new opportunities that British Columbia has not already embraced. As a fully participating member of HOP, British Columbia profits from emerging best practices which are shared as a standing item at the inter-jurisdictional meetings.

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An overview of survey responses revealed the following:

1. Virtually all jurisdictions are going through a restraint exercise. Sometimes these exercises are imposed from the centre of government and sometimes by the justice ministry. Those prosecution services not subject to a formal restraint have been effectively frozen for some time. As a result, all services are looking to improve processes to become more efficient.
2. Every prosecution service expends almost 90% of its allocation on salaries. Most jurisdictions, certainly most large jurisdictions, have a lawyers' association. Most have a collective agreement that establishes salary grids that – barring poor performance – automatically increase based on years of service. In some jurisdictions the automatic increases are restricted to junior prosecutors with controlled gateways, based on merit, to higher paid classes. A few have built in merit pay as well. The net effect of these agreements is that – absent attrition – year over year salaries and benefits keep increasing. While agreements are negotiated or otherwise approved by the centre of government, there is continued attention – if not tension – regarding the pay scale for lawyers. The upper limits of lawyers' salaries compare with the upper limit of compensation for the top 5% or 10% of non-lawyer civil servants. While vacancy management is not mandated, it is practiced in some jurisdictions. When filling positions for retiring counsel, jurisdictions can save funds by

replacing a highly paid counsel with a junior counsel. While this approach may save money it does not necessarily save time: the senior prosecutor has more experience and may be more effective and efficient than a junior counsel.

3. Restraint invariably tries to avoid impacting front-line services. Efforts to innovate and improve process generally focus on technology – with the challenge of e-disclosure at the top of the list. Many jurisdictions are driving toward a wrap-around system that gives the prosecution service the capacity to receive information from police and other investigative agencies, (preferably in standardized formats), redact information, make notes and share information with other justice participants, including the defence, the courts, court services and - ultimately – correctional services.
4. When responding to a question about initiatives that appear promising, Canadian jurisdictions point to the following:
  - a. Electronic disclosure/electronic case management. A few provinces are interested in Ontario's current case management tool: SCOPE.
  - b. Enhanced measures to resolve cases earlier and a more expansive approach to less serious cases so that more focus can be devoted to more serious cases.
  - c. At least one jurisdiction is adopting British Columbia's File Closing Survey, a very promising, and relatively simple-to-apply tool to discern lessons learned from completed files.
  - d. Whether in electronic case management or otherwise, many jurisdictions are committed to increasing management information and business intelligence. Most have adopted key performance indicators: some public facing and some internal to management.
  - e. One jurisdiction has formally initiated a mentoring program within the prosecution service, whereby prosecutors nearing retirement mentor young prosecutors to help them in their careers and avoid knowledge gaps within the service.
  - f. A few jurisdictions are interested in an approach used in Ontario called E-library. Among other benefits, it seeks to produce a first ever electronic trial book for prosecutors. It may yield modest savings in legal research.

A review of the websites and associated literature related to the public prosecution services of Australia, England and New Zealand as well as some follow-up discussions with those jurisdictions reveal that Canadian prosecution services, British Columbia included, are not missing a beat. All

jurisdictions are working on technology to facilitate the transfer of electronic information from police to prosecutors with case management capacity. Specialized units are being deployed at the front end of cases to triage. Specialized units are being directed at emerging and pressing forms of crime. To help improve practices, these jurisdictions survey victims, witnesses and other justice participants, such as the police on a regular basis.

### III. THE CJB'S STRONG TRACK RECORD IN INNOVATION / CONTINUOUS IMPROVEMENT

#### Strategic Planning and Wise Goals

As I have already noted, British Columbia's prosecution services is a champion of change. In 2012, under the auspices of Geoffrey Cowper, Q.C., the provincial government launched a wide-ranging justice reform initiative. The CJB responded with a comprehensive list of "Proposals for Reform" subsequently embodied within the government's White Paper on "Modern, Transparent Justice System (Parts I and II). At the time, Mr. Cowper commented favourably on the proposed response. Since that time, the CJB has embraced those proposals and has implemented or is currently implementing them. In all these initiatives, CJB fully engaged staff and put more emphasis on communicating with external partners.

In 2013, flowing from the 2012 reform initiative, the Province passed the *Justice Reform and Transparency Act* enabling the creation of a Justice and Public Safety Council. The Council is comprised of key participants in the justice system – including the CJB – and has a mandate to set the strategic direction and vision for the provincial justice system by developing a plan, engaging in dialogue with participants and stakeholders, and providing leadership.

Some noteworthy reforms include:

- enhanced file ownership
- redesign for scheduling cases
- province-wide quality standards, or best practices
- proactive case management including early completion of disclosure
- on-line charge assessment
- policy direction on increased early file resolution
- greater flexibility for Direct Indictments
- enhanced victim and witness support
- an electronic file closing survey to increase business intelligence
- a major case management model for mega cases
- a comprehensive disclosure strategy
- aligning the Branch's Strategic Plan with Ministry goals and the strategic vision of BC's Justice and Public Safety Council.

The Council's vision includes four goals for the justice sector:

- **Fair** – by being accessible, impartial and timely
- **Protect People** – via preventative and protective measures, and by working systematically
- **Sustainable** – by being focussed on key services, well managed and effective and
- **Public Confidence** – by being adaptive, performance focussed and empowering.

**In my view, these are wise goals.** They have helped me in my assessment of how the CJB is doing regarding innovation.

Based on that assessment, I have found that the CJB embraces innovation. It takes a number of steps to make innovation part of its culture. For example, it maintains an “Innovation Inventory” to chart significant Branch-wide innovation projects that seek to effect positive change. It charts all justice reform projects. The CJB has a dynamic strategic plan, which complements the Ministry of Justice’s Strategic Framework and reflects the visions and goals of the Justice and Public Safety Council.

### **Greater Transparency**

As part of its efforts to promote transparency, the CJB developed key performance indicators (KPIs), such as the average time to case disposition and the median percentage of files resolved before trial or arraignment – and the Branch has made excellent progress in increasing the percentage of cases disposed of before or at arraignment<sup>10</sup>.

Other measures promoting transparency include:

- a mature set of publically available policies (the Crown Counsel Policy Manual)
- annual reports
- a robust website providing information in multiple languages
- public explanations of decisions in significant cases.

The adoption of key performance indicators, the tracking systems and the commitment to a project management philosophy contribute to my overall view that the Branch is committed to innovation, intelligent change management and continuous improvement.

### **Innovations that have Improved Efficiency**

At this point, I would like to highlight some of the CJB’s key innovation projects that have improved efficiency. (To review them all would take too long.)

**Enhanced File Ownership.** This initiative promotes continuity on a file. Assigning files early to a prosecutor facilitates early resolution and inspires readiness for trial when trials occur. It has obvious benefits for victims, witnesses and investigators. Support staff like it. It operates together with Branch Quality Standards and scheduling improvements. Quality Standards are a set of Branch-wide best practices and new processes for Assignment Court locations. They mandate prescribed steps at intake, assignment of files, front-end procedures, prior to arraignment or fixing dates, and before

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<sup>10</sup> For example, in 2013/14 it was 66.1%, in 2014/15 it was 69.2%, and in 2015/16 it was 73.4%.

trial that apply to seven Provincial Assignment Court locations. The practices at the intake, front-end and prior to trial stages apply to all offices.

**Crown Counsel Scheduling System (CCSS).** This system, with collaboration from the Court Services Branch and the Provincial Court, facilitates electronic scheduling access to police and Crown Counsel calendars. With additional components, the CCSS technology platform has the potential to significantly optimize management of prosecution files and reduce the paper burden. This initiative, along with enhanced file ownership, complements the fresh approach taken in the Assignment Courts. The benefits of the CCSS are currently being piloted and CJB plans to roll it out in fiscal 2016/17.

**Crown Counsel Online Charge Assessment.** In many provinces the decision to approve charges is left to the police; however, British Columbia mandates Crown approval of charges. The CJB is committed to Crown Counsel's use of an electronic system to approve charges. This system, which has its own metric, has resulted in more timely turnaround for decision-making but needs attention to avoid slippage. It promotes consistency and is a critical initial step in the electronic disclosure process.

**Communications.** The CJB has been a leader in Canada in the early adoption of a Branch spokesperson to assist with transparency. The Branch also has a robust website with information available in multiple languages. It pioneered plain language information sheets as well as answers to frequently asked questions (FAQs) about its work. The CJB also works hard to provide clear media statements about its key decisions and actions.

**File Closing Survey.** This tool, which at least one other prosecution system may replicate, helps produce business intelligence on material process issues and file developments across the province. It helps the CJB use history to guide its future work. The tool has the potential to be refined to be able to extract more valuable teachings in a non-labour intensive, non-intrusive way. It is used by CJB management in conjunction with a Quality Assurance Audit Committee to review case management practices.



**Disclosure.** Both the police and the Crown are heavily impacted by the resource burden of complying with the law. The increased use of technology by citizens and investigators has swelled the size of investigative files, increased the time required to review and manage disclosure, and severely tested the ability to make disclosure.

Processing the volume of disclosure, dealing with various technologies, litigating disclosure issues contribute to delay.

**British Columbia was a trail blazer in initiating a comprehensive disclosure protocol,** in the

form of a Memorandum of Understanding with the police to address key disclosure issues such as who is responsible for producing it, by what time frame, for what cost, in what form, and with what content. A dispute mechanism is built in. Amendments have been made. Working with Corrections, the CJB has developed CREDIT<sup>11</sup> (Crown eDisclosure Information Technology), which provides the

The goals of the Comprehensive Disclosure Strategy are to identify best practices and develop a comprehensive strategy for disclosure, including recommendations for future improvements, enhanced efficiencies, and innovative solutions. The recommendations **may** include identifying potential technological solutions. One of the strategies being brought forward is to identify and advance strategic litigation opportunities. Strategic litigation involves taking on cases with good facts to advance a policy position. This is a wise course.

capacity for disclosure to an accused person in custody. Training materials have been prepared for police to assist in assembling disclosure. On their face, these measures appear to be working.

Despite upward trends in the number of RCCs, the number of times RCCs are returned to police for incompleteness or other enquiries appears to be holding relatively steady and the time required for completion of charge assessment is also holding steady – while early resolution rates (which benefit from full disclosure at the front end of the process) have been rising. Work continues on technology improvements to enhance the information flow between police and the Crown, and to develop a capacity to share information with the defence.

In the spring of 2016, the CJB rolled out a Comprehensive Disclosure Strategy with a Project Plan and a Project Charter. This Strategy will build on the work already done through the Memorandum of Understanding with police and recommendations made by the CJB Disclosure Review Team, which undertook a review of disclosure practices at the direction of the Branch’s Quality Assurance Audit Committee. The Branch’s Quality Standards emphasize front-end completion of prosecution

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<sup>11</sup> The CREDIT system is currently being assessed, tested and piloted.

disclosure obligations. The Comprehensive Disclosure Strategy involves an absolute partnership with the Policing and Security Branch (PSB) of the Ministry of the Solicitor General. A close working relationship with the police is the bedrock for this initiative. Eventually, it will entail external involvement and consultation with many other critical participants in the justice system, including the courts, the defence bar, the Legal Services Society, federal and municipal police, correctional services and the Public Prosecution Service of Canada.

## **IV. OPPORTUNITIES TO ENHANCE INNOVATION, EFFICIENCY AND EFFECTIVENESS**

### **Focus Attention and Resources on Disclosure**

**Recommendation #1: Reassess the staffing and funding required for the Comprehensive Disclosure Project.**

The challenge in the disclosure area is immense. Many attempts have been tried across Canada to tackle disclosure, including the seemingly unachievable goal of having a fully functioning electronic case management product that connects police, Crown, defence, courts and corrections. There are some promising approaches. For example, Ontario has developed a product called SCOPE, which is of interest to some other provinces. It may be accurate, but not necessarily satisfying, to have a few years pass before some ideas for technological solutions emerge.

Because of the high frustration level among police – shared by the Crown – **the CJB's Comprehensive Disclosure Strategy is an exceedingly large and critical project, and one that deserves additional resources and focussed attention.**

The Comprehensive Disclosure Strategy team has a lot on its plate, and a lot is riding on its work. The project team is lean. It was anticipated that police services would contribute to reference groups, but a deeper commitment is required now. Based on my review, I am concerned about the level of investment of police resources beyond the marked participation of the Policing and Security Branch. **I would encourage police services such as the RCMP and large municipal police services to expand resources dedicated to this initiative now.** The implications for their workload and opportunities to save resources are so high as to warrant immediate action and investment. Just as they will be an excellent source of ideas for strategic litigation – the cost of which will be borne by the CJB – they have an immediate stake now in ensuring that this large, critical project gains momentum expeditiously.

### **Make Effective Use of Technology**

**Recommendation #2: Redouble the efforts by the Court Services Branch and the Criminal Justice Branch to work together to address the issue of in-court technology.**

**Recommendation #3: Review with police the variable technologies and approaches used within the police community to gather information and share it with the Prosecution Service for the purpose of charge assessment. Identify common standards and clear business rules.**

**Recommendation #4: Focus the Comprehensive Disclosure Strategy on selecting a comprehensive case management system.**

**Recommendation #5: Explore alternative platforms for the Branch's Intranet, including a review of the E-library approach adopted by Ontario.**

Technology is a critical part of most innovations to enhance efficiency and productivity, and a significant challenge. In my meetings with CJB staff, I consistently heard concerns about technology. Their frustration has been voiced consistently over time. The sources of their concern include:

- the availability and delivery of technology inside courtrooms – an ever-increasing pressure because of the increasing reliance on audio-video technology in investigations
- network capacity and hardware issues – because technology is increasingly required for effective prosecutions, the service needs more central supports and a concrete plan to improve technology infrastructure
- the different ways/technologies are used to capture information by the police and from the police.

Leaders within the CJB, including the technology lead, are committed to addressing these issues. I was also impressed by the spirit of cooperation between the Court Services Branch and the CJB, and the willingness and desire of the two groups to work together to resolve common issues; however, I would recommend that more urgency be brought to addressing technology gaps.

I want to amplify my remarks about some aspects of technology. Among other tools, prosecutors require a case management system that is able to:

- receive documents – often large number of documents – from investigators in a consistent format
- manage documents – meaning they can be sorted, repackaged and forwarded.
- redact privileged or irrelevant material
- have a note-making capability
- offer security and encryption
- be operated and modified easily.

The system must have document management, litigation management and data management capabilities. It needs to be economical and scalable. That is a tall order and one that has stymied prosecution services in Canada, especially as the demands for disclosure, production and their formats have grown exponentially.

The Province has a long-running case-tracking system called JUSTIN, which police rely on at the investigative stage. JUSTIN provides data – or at least tombstone data – on all charges in the system. While not originally designed as a management information tool, it has been transformed to provide some of that capacity. It has been enhanced to enable CREDIT (Crown eDisclosure Information Technology), a technology under development to reliably and securely deliver disclosure to inmates. The File Closing Survey initiative intersects with and complements the data available through JUSTIN and the online charge assessment and approval system is performed on JUSTIN.

**Being first in class in relation to knowledge management can only benefit efficiency and quality.** As I see it, there are five possibilities that the Comprehensive Disclosure Strategy should assess in its efforts to develop a more comprehensive effective case management system:

1. The work done by CJB, the Public Prosecution Service of Canada and E-division (Royal Canadian Mounted Police) on major case disclosure (including ledger-based disclosure, which relies on Excel)
2. The “Ringtail” system used in the CJB’s Major Cases unit
3. CREDIT’s (Crown eDisclosure Information Technology) ability to be modified to grow its document management capacity
4. Other systems in use in Canada such as SCOPE
5. An entirely new approach bundling some of the spokes, such as JUSTIN for data, into a new hub approach.

The CJB’s Intranet system is not easily updated or navigated, and it could profit from a more robust search capacity. In my view, spending some time looking at E-library being examined by Ontario and other technology platforms may be worthwhile.

## Improve Timelines and Efficiency

**Recommendation #6: Ensure CJB has adequate resources – including technological and paralegal resources – to ensure that time to trial is respected while also supporting the transformational work required to implement the Comprehensive Disclosure Strategy.**

Delay is the bane of a justice system. It is the antithesis of access to justice. The CJB has a strong commitment to addressing this value captured in the Charter. The Supreme Court of Canada underscored the importance of this constitutional right to criminal trials without unreasonable delay with its release on July 8, 2016 of *R. v. Jordan* 2016 SCC 27. The court altered the law, creating a presumptive framework for cases that, going forward, will be considered unreasonable, barring exceptional circumstance being established. The CJB has been working to improve timelines as part of its core business for a long time. It is well situated to deal with this new challenge. In addition, the CJB is devising a sensible plan to respond to the ruling.

The CJB has a number of measures to assist in providing timely trials. They include:

- KPI measurements regarding judicial stays of proceedings, charge assessment turnaround time, time to case disposition and the percentage of files that resolve at or before arraignment
- electronic tools such as online charge assessment
- enhanced file ownership and provincial wide quality standards
- electronic disclosure management in the Branch's largest prosecutions
- a Major Case Management model
- processes to support the Provincial Court's Assignment Court model and a new scheduling system
- process review of business processes
- early case management in Supreme Court cases
- a Comprehensive Disclosure Strategy
- a Crown Counsel policy that emphasizes early file resolution
- greater flexibility for principled use of Direct Indictments.

In assessing the potential impact of the ruling, the Supreme Court emphasized that the presumptive time frames should not detract from the constant focus of effectively moving all cases along. Secondly, not all of the Province will be impacted identically. Through good management the

number of cases stayed for delay has been very low in recent years. More rapidly growing areas or larger urban settings are more likely to attract scrutiny.

**I am concerned, however, that the *Jordan* decision will place a premium on the Prosecution Service's already strained disclosure delivery capacity.**

### **Extend the Major Case Management Approach**

**Recommendation #7: Apply the CJB Major Case Management approach to a larger number of cases.**

**Recommendation #8: Start now to consistently track near-Major or large cases.**

The CJB has a leading best practice in relation to what it designates as Major Cases: the largest and most complex cases in the system. The unit has a wise, well-experienced Executive Director. It has an approach, a disclosure tool, some dedicated resources and the ability to bring paralegal assistance to bear. It works closely with police as the investigation is proceeding. It takes a pro-active approach by addressing issues with defence counsel, with a view to committing to a satisfactory and principled resolution, if feasible, without lengthy proceedings.

Every year, about half a dozen Major Cases are active in the system, and a similar number of very large prosecutions may be resolved without a trial. Major Cases and near-Major Cases represent an increasing challenge<sup>12</sup>. The Major Case Management approach, which has much to commend it, should be applied to a larger number of cases. If the CJB is doing so well on arguably the largest 6 cases a year, what about the next 100?

The CJB is aware that it needs to broaden its Major Case Approach to include near-Major Cases. It has formulated a Major Case Management model but has been hampered in implementing it because of resource limitations. **I believe more urgency should be directed here.** The leadership is in place. The tools are known.

Applying the Major Case Management approach to other cases, which do not meet the defined designation criteria but are, nonetheless, near the line and very large in size, will require resources.

As such, an incremental approach should be taken as follows:

- The Branch should develop an approach that provides a response proportionate to that used for Major Case Management for the next largest 100 cases or so, perhaps starting with newer cases.

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<sup>12</sup> The PPSC Annual Report 2014-2015 notes at p.9: "While high-complexity files represent only 2.35% of staff counsel's drug caseload in 2014-2015, they took up to 36.24% of the time dedicated to drug prosecutions."

- For the first year, it could set a target of 10 or 20 additional cases building up to 100 or so over time.

The question arises: which cases would benefit most from this approach? **The most fruitful opportunity to extend the Major Case Management approach is the constantly increasing number of cases that are inter-jurisdictional, involve “guns and gangs”, involve organized crime or are serial crimes.** At present, there is no formal tracking of these significant cases.

Consistently tracking these cases will help the CJB determine where best to use this highly effective approach. Other benefits will also emerge.

### **Use a Consistent Approach to Measure Complexity**

**Recommendation #9: Implement a simple consistent approach to measuring case complexity.**

**Recommendation #10: Work with Heads of Prosecution partners to see if there are any benefits emanating from current approaches to measure complexity.**

One of the most challenging issues for a prosecution service is to get a fix on its workload. While those in prosecution services readily argue that the increasing complexity of crime and cases is driving costs, it is not so easy to prove. Many prosecution services have attempted to quantify the work with less than productive results, and they are not alone. The judiciary faces a similar challenge.

Some services have engaged in detailed projects that involve docketing, attributing weight to types of cases and the like. Such undertakings require much effort, are difficult to sustain and produce variable data that requires much interpretation. At the same time, many prosecution services, the CJB included, have developed a public set of key performance indicators (KPIs) that have proven useful. The KPIs target critical information such as size of the caseload, time to trial, settlement rate prior to trial and the like.

I am impressed with the Branch’s KPIs. I would suggest that the CJB give consideration to a few additional KPIs, for example, to better track the Crown file ownership and the Quality Standards Initiatives. However, these KPIs cannot get at complexity. Other members of the HOP are currently involved in projects trying to come up with a complexity framework.

I definitely would not recommend a detailed work project to measure complexity. Instead, I would suggest a simpler approach that requires no busy work. I am impressed with the simple approach of the Public Prosecution Service of Canada (PPSC). It classifies cases into three categories: high-



complexity, medium-complexity and low-complexity. The PPSC has a simple and useful chart that provides tips to classify cases.

I am not at all suggesting that a seemingly simple case cannot have challenging issues and that a more serious matter cannot resolve itself quickly. What I am suggesting is that a simple classification system should be adopted. The effort could be focussed on defining a high-complexity case. Within that class further evaluation, where accessible, could be undertaken over time such as counting court hours, volume of disclosure, preparation time and the like. Getting a handle on the counting, without a large investment of time, will assist in describing the narrative and deploying resources and will produce better business cases in future. The definition of high-complexity cases could be a bi-product of a plan to expand the Major Case Management approach to the next tranche of very large cases.

Some effort can also be put into addressing what a low-complexity case is. For example, presumptively low-complexity cases might include all cases proceeded by way of summary conviction, among other defining characteristics. If there is agreement on the “largest” and “smallest” case definitions, what remains can be easily slotted into the medium complexity category.

### **Develop New or Revisit Existing Policies Related to Indigenous Peoples, Mental Health, Alternative Measures, Domestic Violence and Administration of Justice Offences**

- Recommendation #11:** Advance a self-standing prosecution policy related to Indigenous peoples.
- Recommendation #12:** Create a stand-alone prosecution policy to speak to the entire Branch and the public on mental health.
- Recommendation #13:** Appoint a lead on mental health.
- Recommendation #14:** Review existing policies to ensure alternative measures are available for low risk cases where some lesser degree of treatment or assistance is warranted.
- Recommendation #15:** Develop a prosecution policy that will capture best practices in responding to domestic violence.
- Recommendation #16:** Study the causes of the growing number of administration of justice breach charges.

**Indigenous Peoples.** The CJB has a mature and comprehensive Crown Counsel Policy Manual. However, I would like to highlight the need to develop or amplify policies in several key areas:

Indigenous Peoples, mental health, alternative measures and diversion, domestic violence and administration of justice offences.

While CJB policies touch on the important issues related to Indigenous Peoples, the Crown Counsel Policy Manual does not currently have a discrete policy respecting Indigenous peoples. I understand that the Branch is aware of this gap and is doing background work in order to advance a policy on Indigenous Peoples and I strongly support this work.

**Mental Health.** In the mental health area I spoke with some committed prosecutors and became acquainted with some laudable examples of effective service delivery for people with mental health issues. Given the strong connection between mental health and criminal justice – including the large number of offenders with some degree of mental health issues – and the number of unrepresented accused, I would recommend two measures. Firstly, I would recommend that *there be a stand-alone prosecution policy* that would speak to the Branch’s overall approach, to the propriety of alternative measures, Review Board proceedings, the Vancouver Downtown Community Court approach and other best practices that assist with responding to the challenges that affected accused may present. A related recommendation is that *there be a lead on mental health*. While there is a lead for Review Board work, there is no overall Branch lead on mental health. Whether the lead is within the office responsible for policy or elsewhere, the issues are sufficiently significant to warrant a lead. I recognize that discrete parts of mental health delivery are handled extremely well but a more coordinated approach and a single message is justified.

**Alternative Measures:** In his 2012 report, Geoffrey Cowper Q.C. stated in part:

“Over the last six years, referrals from Crown to alternative measures have been stable, at 4% to 5% of cases coming into the system – despite widespread support for the use of alternative measures, including restorative justice”<sup>13</sup>

He noted the need for further work and study as well as a performance goal for increased use of restorative justice programs. He also identified the challenge of increasing funding.

Alternative measures stems from s. 717(1) of the *Criminal Code*. The CJB’s approach to alternative measures is captured in Crown Counsel Policy – ALTI. While the policy is sensible, it is dependant on a report from the Corrections Branch supporting suitability. The policy states in part:

Cases Requiring Offender Programming or Treatment

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<sup>13</sup> Cowper Report, p. 41

Subject to the above guidelines, Crown Counsel are responsible for deciding to refer an accused person to a probation officer for screening for alternative measures. At the conclusion of the screening process, the probation officer provides Crown Counsel with a recommendation for or against the use of alternative measure. Crown Counsel then have the discretion to follow or not follow the probation officers recommendation.

**With respect to screening, Corrections Branch policy states in part, “a referral is always unsuitable if programming or treatment is required.” Programming or treatment includes any kind of ongoing intervention required to correct an offender’s thought processes. Examples include psychological or psychiatric therapy, anger management programs or substance abuse counselling. Programming or treatment is often required in the rehabilitation of offenders found guilty of sexual or domestic violence offences. [Emphasis added]**<sup>14</sup>

While I did not have the opportunity to speak with Corrections, it strikes me that the policy limits the ability of prosecutors to advance alternative measures or diversion. It is a disincentive for prosecutors to consider alternative measures and is arguably inconsistent with the Cowper Report. The percentage of cases approved for alternative measures as a total of RCCs received has dropped from 2,089 (2.66%) in 2011 to 873 (1.2%) in 2015/16. While there may be other explanations for the drop, such as more reliance by police on pre-charge diversion, the trend within the prosecution services deserves close attention.

In the area of domestic violence, alternative measures are available under the Spousal Violence Policy – SPOI but with the same limitations previously cited. The mounting number of cases in the formal system highlight the need to permit low risk offenders to be considered for diversion. Addressing this class of offender is consistent with the independent exercise of prosecutorial discretion and the Province’s published vision for a “Violence-Free” society. While the Cowper Report recommended “diversion if appropriate”<sup>15</sup>, the Alternative Measures Policy is a formidable obstacle to implementation. Domestic violence is a significant priority for society and certainly the Province of British Columbia. The emphasis necessarily has to be on safety.

**Domestic Violence.** British Columbia has produced at least three key reports in this area in the last few years: A Violence Against Women in Relationships Policy in late 2010; A Provincial Domestic Violence Plan in 2014; and A Vision for a Violence Free BC (addressing violence against women in British Columbia) in 2015. These reports recognize that, following risk assessments that disclose low

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<sup>14</sup> Crown Counsel Policy Manual – Alternative Measures for Adult Offenders - ALTI

<sup>15</sup> Cowper Report, p 13.

risk and appropriate programming, offenders may be eligible to be diverted from the criminal justice system. In the Provincial Domestic Violence Plan there is a commitment to “introduce and provide direct services for perpetrators of domestic violence **prior** to involvement with the criminal justice system (emphasis added).”<sup>16</sup>

I observe that the CJB is in the midst of revising its Crown Counsel Policy Manual. The revisions will capture the specialized responses and processes – the best practices – in this area, including specialized domestic violence dockets, designated Crown Counsel teams and similar effective approaches. Of these three measures I find that dedicated domestic violence teams have the most potential to make a difference. Domestic violence cases require early and constant attention as well as consistency and trained prosecutors who work with victims and other services. Largely as a result of these teams, the percentage of domestic violence files resolved at or before arraignment has grown from 61.6% to 63.6% to 65.9% over the last three years.

**Administration of Justice Offences.** One other area for Crown Counsel Policy review is the continued growth of administration of justice offences, particularly breach charges. There is no dispute that ignoring breaches may demonstrate a lack of respect for the justice system; however, there should be an informed discussion about what type of breaches warrant charging. At the current time, there is inadequate information about the type or nature of the breaches that have caused the number of charges to swell. The Cowper Report called for this study and discussion<sup>17</sup>, and I would like to reinforce that it should continue to be a priority. This project, of course, needs to be undertaken with police.

### **Enhance Collaboration**

**Recommendation #17: Improve communication between CJB and Victims Services Division.**

**Recommendation #18: Work with the Justice Services Branch to identify large cases about to enter the system earlier.**

**Recommendation #19: In consultation with the Justice Services Branch and Legal Services Society, identify disincentives to early resolution in the legal aid compensation scheme.**

**Recommendation #20: Conduct regular regional and/or provincial forums with defence counsel to inform best practices.**

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<sup>16</sup> Provincial Domestic Violence Plan, p 21.

<sup>17</sup> Cowper Report Recommendation, No 1.1.13, ps. 9-10

**Recommendation #21: Ensure investigators have appropriate access to advice from Crown Counsel on more complex cases.**

As I noted earlier, the critical quality of independence may be misconstrued to suggest that the Prosecution Service is averse to collaboration – but that would be very wrong. I have concluded that, just as the CJB fully embraces independent decision-making in cases, the Branch fully appreciates the value of collaboration. It is committed to innovative solutions for service delivery and systemic improvement. The CJB’s mission statement emphasizes that it will deliver on its core responsibilities “in a manner that safeguards prosecutorial independence, **and** supports an effective justice system through communication, collaborative effort and innovation.” I am impressed that the CJB understands that, to improve the justice system, a collaborative approach must be taken. I will cite some important examples of how the CJB is working effectively with others:

- with the Court Services Branch and the Provincial Court on scheduling and file ownership initiatives
- with the Supreme Court of British Columbia roundtable discussions on Major Case Management
- as a member of the Justice and Public Safety Council to develop a Strategic Plan for the Justice Sector
- as part of the Ministry of Justice Strategic Framework for Sustainability
- as participant in the Crown Counsel Agreement and the BCGEU contracts
- as a member of the Ministry’s Information Management and Technology Governance Committee.
- as a member of the corporate Business Intelligence and Performance Management initiative
- as participants in a series of Justice Summits on important justice issues
- as a member of the Heads of Prosecution sharing best practices in criminal practice and management. The jurisdiction, as part of the federal-provincial-territorial process, benefits equally from the regular forums on important criminal justice opportunities involving Attorneys General and Deputy Attorneys General and their counterparts in policing and correctional services.
- with the Policing and Security Branch on a Comprehensive Disclosure Strategy, building on the leading work originally captured in the innovative Memorandum of Understanding on Disclosure

- as co-chair of the long-standing Crown Police Liaison Committee with an emphasis on mutually acceptable problem-solving of common issues
- as a member of the Forensic Psychiatric Services Commission, which provides a strategic perspective to the delivery of forensic services to the courts
- with the Court Services Branch in trying to strengthen the delivery of technology in the courtroom
- with the Victims Services Division on better supporting victims
- with the Justices Service Branch that liaises with the Legal Services Society.

When I reviewed these collaborations, I identified some areas for improvement.

**Victims Services Division.** Although the services work well together, sometimes information updates to files (e.g. where a victim lives, notes on the progress of cases) are not entered. Protocols respecting accessing and updating files can easily address these gaps.

**Justice Services Branch.** In my view, CJB has two opportunities to improve collaboration with Justice Services Branch. On the large cases there is a perception that the JSB could profit from *earlier knowledge of larger cases about to enter the system*. Appreciating that there are security and confidentiality concerns, some work could be done on this issue that may help challenging cases land more smoothly. A second opportunity is for the JSB to continue to receive input from various participants, including the CJB, about strategies to identify and remove any disincentives to early resolution in the legal aid compensation system.

**Defence Counsel.** The relationship between the CJB and the defence bar is excellent. Great dialogue occurs at the local level – often with the participation of the judiciary. I understand that, in time, the defence bar will be consulted on the Comprehensive Disclosure Strategy. However, I am a *proponent of conducting regular regional and/or provincial forums with defence counsel to exchange information, identify any obstacles in current practices and develop approaches to eliminate those obstacles.*<sup>18</sup>

There are many potential issues for discussion with defence counsel such as: how to promote more meaningful appearances, including the use of video appearances; and the challenges of dealing with accused who have mental health issues. I suggest a modest initial agenda. Goodwill will identify other opportunities.

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<sup>18</sup> I have in mind some of the examples of the *Justice on Target* initiative in Ontario

**Police and Crown Counsel.** The relationship between the police and the Branch appears to be solid and respectful. Excellent communications between the two actors exist. In fact, British Columbia is a leading exemplar within prosecution services because it has a comprehensive Memorandum of Understanding between the police and the Crown on disclosure. The MOU covers what need be disclosed, when, in what form, costing responsibility, quality control standards and has a dispute resolution mechanism. It has and will be amended to suit new pressures and advances in investigations and prosecutions.

Police and Crown Counsel have also collaborated well on large-scale, highly visible projects such as the Stanley Cup aftermath. The Major Case Management approach requires rock-solid collaboration.

While the relationship between the police and Crown is healthy, in my meetings with police representatives, I heard about their wish to have more access to Crown Counsel for advice. This request is not borne out of a desire to blur the distinct and independent roles of Crown Counsel and the police. The police are not looking for embedded prosecutors to work as part of police teams. They are not trying to alter the practice, legislated for in the *Crown Counsel Act*, that Crown Counsel approve charges. They are merely seeking early focussed legal advice on challenging issues within an investigation or a fuller explanation for a decision. Invariably such advice may tend to touch on whether a case may be approved and in what form but that is, in my view, a risk that can be managed by: deploying senior, experienced prosecutors to provide advice; and making it clear that the charge assessment process need be respected and that operational decisions, albeit informed by prosecutorial experience, are ultimately the responsibility of the police.

This more collaborative approach between police and Crown Counsel on complex cases may square up well with the recommendation to expand the Major Case Management approach to near-Major and other large cases.

### **Continue to Engage and Support the Workforce**

**Recommendation #22:** Conduct an in-depth staff consultation on continuous quality improvement.

**Recommendation #23:** Review the role of Administrative Crown Counsel to clarify, acknowledge and support work expectations.

**Recommendation #24:** Clarify the role of paralegals and make greater use of their skills.

**Recommendation #25:** Provide leadership in career and succession planning.

**Recommendation #26: Create virtual committees of staff – organized by small, medium and large offices – to develop consistent best practices for their work settings.**

The CJB has approximately 850 employees including about 480 prosecutors, and I would like to note that I was universally impressed with the people I met.

The organization is led by a committed, energized and talented management team. Ms. DeWitt-Van Oosten, ADAG and head of the organization, has exceptional vision, skill, experience and credibility. The ADAG enjoys the confidence of her principals. She has worked hard on relationships. Leaders inside and outside the Branch admire and respect her. Not surprisingly, the relationship between other justice participants and the CJB is very strong. I was impressed by the gender balance within the Branch and its management as well as the commitment to reflect the Province’s diversity in the workplace.

The morale within the Branch is very high. This is reflected in the exemplary engagement scores, laudable for any organization, and exceptional in a government environment.

**Staff Engagement/Consultation.** The dozens of CJB staff I met with – in a variety of jobs, specialties and levels of seniority – all displayed a love of the job and a trust in leadership. Morale is high. On public service-wide engagement surveys, the CJB’s engagement scores are some of the highest in government – although I must note that counsel report higher levels of engagement than administrative support staff. I have no doubt that these strong scores are due, in part, to the satisfying nature of the important work that staff do. But they are also due to a management style that permits staff, within bounds, to do their jobs and engages them in change – listening and communicating. The ADAG’s regular communiqués, an effective best practice, is but one of a series of measures contributing to open communications and a sense of team.

In addition to the public service engagement surveys, the CJB conducts its own regular, more detailed check ins with staff. These extensive consultations with staff – the most recent of which was done in 2011/12 – are invaluable and provide an intense opportunity for staff to provide feedback and offer guidance on future directions. While my review may offer some degree of equivalent value, these more in-depth periodic exercises are able to explore a wider range of questions and obtain richer staff commentary. Staff engagement is crucial for continuous improvement. **In my view, the time is nearing for another consultative process with CJB staff.**



**Branch Structure.** My review of the delivery of legal services within the CJB found a relatively lean, nimble structure. Working closely with Directors, Regional Crown Counsel and CJB Communication Counsel, each of which have specific accountabilities in these areas, the Office of the Assistant Deputy Attorney General appropriately maintains robust engagement within the Branch's executive stakeholder relations, policy and justice issues, business operations, strategic planning and communications functions.

Consistent with other prosecution services, CJB has a number of centralized legal supports in the Crown Law Division ready to respond to pressing issues and to provide support to the field. These services include:

- indictable appeals and special prosecutions, including organized crime prosecutions
- focussed specialty teams for commercial cases, proceeds, securities and administration of justice prosecutions<sup>19</sup>
- supports and centres of excellence for areas such as environmental prosecutions, francophone prosecutions, Major Case Management, Review Board proceedings and high-risk offenders.

The Crown Law Division cultivates specialists in particular areas to act as resources for the Prosecution Service. A Prosecution Support office within the Division assists with Charter litigation, helps direct strategic litigation and co-ordinates professional development, among other duties.

The five regions are supervised by a Regional Crown Counsel, a Deputy Regional Crown Counsel<sup>20</sup> and a Business Manager. In addition, each region has a number of Administrative Crown Counsel whose term can be as short as two or three years but often run longer depending on the circumstances.

The structure of CJB's management appears sound. Although management is sometimes stretched, there are no obvious gaps. Apart from the following issues, I do not see any obvious structural overhaul that the CJB need undertake.

**Administrative Crown Counsel.** Within CJB, there is some concern and debate about the expectations and consistency of the role of Administrative Crown Counsel. Although they are not classified as management, they are expected to operate as managers. It is critical that CJB continue

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<sup>19</sup> For example, serious allegations against law enforcement personnel.

<sup>20</sup> There could be more than one within a Region.

to attract high quality individuals for these key posts; therefore it is important to examine their role, recognition and rewards.

**Paralegals.** There are a small number of paralegals in the CJB and their duties are not identical. It would be helpful for the CJB to have a more consistent understanding of their role. In terms of the ratio of legal to non-legal support staff (60/40), my sense is that it is within the range generally found in Canadian prosecution services. However, I believe there are opportunities to make greater use of paralegals to ensure that some counsel are not, on occasion, performing duties that could and should be done by paralegal or support staff. The CJB established a Paralegal Project and now has a Paralegal Resource Group in place to assist in identifying ways to make more effective use of paralegal skills and to develop best practices. The Supreme Court of Canada's decision in *Jordan* will place a premium on reviewing all cases for disclosure compliance and trial readiness or face delay applications. Addressing that critically important function can be ideally suited for paralegals working with Crown Counsel.

More effective use of paralegals also produces other benefits within the workforce. Certainly, the support staff who are not paralegals see greater reliance on paralegals as a potential career development opportunity for them. It can also be an effective strategy to control overall compensation costs. To manage the pressure to expand services to meet growing population needs, CJB must take care to ensure that new staff are correctly pegged as counsel or support staff, as the case may be.

**Career and Succession Planning.** I would like to see more emphasis on the importance of *leadership through succession planning* – for both legal and non-legal staff. While the CJB has paid some attention to career development and succession planning, more work must be directed here – because of management demographics, the current rotation of Administrative Crown Counsel and the need to attract project leads. In addition, staff want to know more about what may lie ahead for them.

**Virtual Best Practice Staff Committees.** In terms of administrative support staff, CJB faces both challenges and opportunities. It can be difficult to retain support staff in urban settings because of the high cost of living and the large number of opportunities for advancement across a broad array of government offices. While the wage gap between professional and non-professional staff in prosecution services will always be present, CJB could use non-compensatory strategies to improve support staff engagement. For example, when I met with support staff and management, I was

impressed with their commitment and professionalism, interest in training and best practices, and desire for clarity about possible career paths. There was a genuine appreciation of opportunities for additional training, including the ability to gather in person from time to time – provincially or regionally – to hear about and trade best practices. Right now, practices are not consistent: different offices approach processes differently, and the CJB would benefit from moving to common practices<sup>21</sup>. Among staff, there is an appetite and an opportunity to create virtual committees to tackle process issues and formulate best practices. Both the newly developed Continuous Improvement Plan and the Paralegal Resource Group may assist. Rationalizing the paralegal question may also provide answers to support staff questions about possible career paths. Support staff were also consistent in wanting to be more fully integrated in Crown Counsel’s work.

Because of the variability of the prosecution offices within the CJB, I would recommend that virtual committees of practice be established between small, medium and large offices to share best practices. These virtual committees should involve legal and support staff.

## **Compensation and Performance**

**Recommendation #27: Develop programs to assist senior legal staff with retirement planning and provide options for staged retirement.**

**Recommendation #28: Develop programs and strategies to address a potential knowledge gap.**

**Recommendation #29: Emphasize sound performance management.**

Most of the CJB budget goes to salaries, which are negotiated under collective agreements. The current collective agreement determining Crown Counsel compensation is in force until 2019. A cross-Canada review reveals that virtually all prosecution systems operate with similar collective agreements. These agreements or memoranda of understanding are inevitably bargained by the centre of government. From time to time, there is some criticism of the relatively high compensation schemes for lawyers within government. Salaries are not and could never be pegged at the same level as private sector compensation but competitive remuneration ensures that quality people will be overseeing this critical role in society.

Sometimes the criticism is related to downturns in the economy; sometimes to more general concerns about judicial compensation. Whatever the context, most government lawyer compensation schemes have a predictable grid that sees incomes increase with seniority. As a

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<sup>21</sup> Some work has been done in this regard such as project on rationalizing forms in use by the CJB.

prosecution system matures – as is the case in British Columbia – the cost of compensation increases. The pressure to fund these compensation agreements, especially in times of constraint, can be a challenge.

**Retirement Planning and Continuity.** I would make a few observations. There is an appreciable difference in compensation rates between senior and junior prosecutors, which acknowledges the senior prosecutors' experience. When senior prosecutors retire, the CJB can replace them with younger prosecutors who will be paid less – thereby reducing the cost of counsel compensation. In years past, many prosecution services could count on a predictable turnover thereby assuring steady recruitment of promising young talent.

However, with the elimination of mandatory retirement, the financial gap between a junior and senior prosecutor's pension and full salary, and concerns about what they will do when they leave the job, senior prosecutors may be less willing to retire. Given current salary levels, the quality of their benefits and the satisfaction that many senior counsel experience in their work, retirement has slowed. However, one day, the CJB will see a bubble of retirements – resulting in increased savings as well as a potential knowledge gap.

There is an opportunity for the CJB to continue to benefit from the experience of its senior prosecutors while helping them prepare for and shift into retirement. A prosecution service is always in need of some *ad hoc* services to address peak periods, conflicts of interest and similar issues. Senior prosecutors who are eligible for pensions could be offered some target amount of *ad hoc* prosecuting for, say, a two-year period. This approach may help those who want to retire to do so. Of course, compensation for the *ad hoc* work would have to have a ceiling to comply with pension restrictions.

The CJB could also explore other strategies for staged retirements that support senior counsel and, at the same time, take full advantage of their knowledge and experience, such as:

- arrangements that incrementally reduce the workloads/working hours of senior counsel
- initiating a mentorship program within the BC Prosecution Service, whereby prosecutors nearing retirement mentor young prosecutors to help them in their careers and avoid knowledge gaps within the service.

**Performance Management.** It is critical for CJB to have a sound performance management scheme. The assets are too valuable. Every one counts. Management needs to ensure that everyone is working satisfactorily and doing work that is satisfying.

Performance management is the staple of healthy negotiations. It is a pivotal foundation piece for the public service. Meaningful performance management ensures that staff are in line with the goals of the strategic plan and the change management agenda. It is also an opportunity to check in with staff about future development plans and possible changes to staff availability. It helps identify talent and future supervisors, and it addresses gaps. Even if pay is predictable, performance management serves critical ends.

### **Make Informed Decisions about Resource Allocation**

**Recommendation #30:** Conduct a support staff workload project to assess regional and local needs.

**Recommendation #31:** Once work is underway on measuring complexity of cases, undertake a workload study for Crown Counsel in the field.

**Recommendation #32:** Establish a dedicated surge capacity to backfill positions.

Another constant challenge to a prosecution service is allocating resources. It is daunting to assess whether resource allocation is fair. In part this is the result of not having an accurate handle on complexity and workload. The delivery of prosecution services involves the application of professional responses in an environment involving a number of independent actors. There are layers that take into account history, culture, changes in population and criminal activity to cite but a few factors. To inform resource allocation decisions, the CJB needs accurate information.

**Support Staff Workload.** I see no evidence to suggest that there is an abundance of prosecutors. A CJB specialized workload study disclosed a small negative gap in the number of prosecutors. However, the same 2004<sup>22</sup> study concluded that there was appreciable overstaffing in the support staff ranks. Leaving aside the correctness of that assessment today, I would recommend a support staff workload project. I make that observation for several reasons. The first is that a superficial review of the ratio of support staff to legal staff discloses some anomalies in regional and local distribution of staff. While there may be historical reasons for the way in which an office was staffed over time, a fresh look at support staff workload allocation may be warranted – particularly given the

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<sup>22</sup> For a variety of reasons, CJB questioned the reliability of the results from the 2004 study and, ultimately, it was not actioned further.

progress of technology and the continued commitment to streamlining business processes and making them consistent across offices.

**Crown Counsel Workload.** The ratio of manager to prosecutors appears to be in an appropriate range. However, the number of prosecutors in the field does not always lend itself to easy comparisons. There are no guidelines to divide work among prosecutors; however, through good management and effort, priorities are addressed. I would recommend that once work is well underway measuring complexity, a workload study for Crown Counsel in the field be undertaken. Some Commonwealth jurisdictions are developing a target case load for prosecutors in terms of an optimal profile for mixes of small, medium and large cases.

**Surge Capacity.** Large prosecutions, such as Major Cases and some in the next tranche down, drain resources from the normal load of cases. Given the difficulty in predicting workload pressures – including large cases and projects – the CJB should consider establishing a dedicated surge capacity for legal and non-legal resources. This group of staff – more junior in seniority – would be recruited with the knowledge that they may have to be mobile and would be available to backfill for offices that contribute more senior prosecutors to larger cases. In a like vein, subject to bargaining, staff could be hired knowing that they may be assigned to out-of-town work. A surge capacity may assist in responding to changing pressures and the impact of *Jordan* on the Branch.

A small committee of experienced managers/prosecutors could decide on assignments every six months or so. At the same time, such a committee could offer peer-type guidance on key strategic decisions relating to these large cases, much in the fashion that the Executive Director and the advisory panels under the Major Case Management model now do. The Major Case Management approach could simply be expanded to assist with this task, and paralegals could be part of this approach.

## V. CONCLUSION

After looking across prosecution services within and outside Canada, I have concluded that the BC Prosecution Service, delivered through the Criminal Justice Branch, is a highly functioning, dedicated and exemplary service. It has strong, effective leadership, a thoughtful, reflective and planned approach, and a dedicated and engaged workforce that is strongly committed to moving forward. It is at the top of prosecution services in relation to innovation, collaboration, communication, efficiency and continuous improvement. The CJB has achieved all these productivity outcomes while delivering on its promises to citizens to provide fair, ethical, consistent, impartial, high quality service that has public safety and the public interest top of mind.

While the CJB already has a enviable track record in terms of innovation, there are still opportunities for improvement.

The most measurable impacts will be made by fully supporting the Comprehensive Disclosure Strategy and case management system, which will significantly enhance work processes and lay the foundation for many other related interventions. Technology continues to offer the promise of enhanced efficiency, and I would like to see the CJB focus on developing/adopting in-court technology, systems that enhance communication with investigators and corrections, and more robust and user-friendly internal systems (e.g. Intranet and search capacities). There are also a number of strategies the CJB could pursue to reduce delays and improve the timeliness of its services.

British Columbia has been a pioneer in its innovative and highly effective Major Case Management approach, and I recommend that the CJB track its large prosecutions and expand the Major Case Management approach – incrementally over time – to the next 100 largest cases.

Faced with increasingly complex crimes and cases, the CJB should develop a simple consistent approach to measuring complexity and define both large and small cases, as a way to help assign cases and manage workload. In this area, the BC Prosecution Service can learn from the work being done by other Heads of Prosecution across Canada, particularly the Public Prosecution Service of Canada.

While British Columbia has a mature Crown Counsel Policy Manual, I suggest that it be revised to reflect key emerging issues related to Indigenous Peoples, mental health and domestic violence – as

well as to support appropriate use of alternative measures and to understand and manage the growing number of administration of justice offences.

The CJB has developed effective collaborative working relationships with its many partners. These collaborations could be strengthened through focussed attention to some critical gaps and opportunities, particularly in its relationships with Court Services Branch, Victims Services Division, Justice Services Branch, defence counsel and police.

The strength of the CJB is its talented and dedicated workforce. Management is strong and respected, and works hard to ensure that employees have the resources and specialized supports they need to do their jobs. Counsel and support staff find their work satisfying and morale is high. To capitalize on the strengths of its workforce, the CJB should consult formally with staff, engage them in communities of best practice, review certain key roles – particularly Administrative Crown Counsel and paralegals, and put more emphasis on being a leader in career and succession planning. Given the maturity of the CJB workforce – particularly Crown Counsel – there are opportunities to enhance retirement planning and provide options for staged retirement that will allow the Branch to capitalize on the expertise of senior counsel while avoiding knowledge gaps that could occur if too many experienced counsel retire at the same time. A stronger focus on performance management would help ensure staff understand the goals of the CJB's strategic plan while providing an effective way for managers to identify and nurture talent.

Allocating resources will always be a challenge in a busy prosecution service. A better understanding of workload – as well as the complexity of different types of cases – will help the CJB make more informed decisions about how to use its workforce effectively. I also strongly recommend that an organization as lean and as focussed on efficiency as the CJB develop a flexible surge capacity to be able to backfill positions quickly when senior counsel are required to shift their priorities to contribute to large cases or emerging pressures.

BC's Prosecution Service is a leader in innovation. It has already demonstrated that it understands that continuous quality improvement must happen in all aspects of its operations. Innovation is about people, technology, collaboration and communication – and how all assets can be used most effectively to provide high quality service. It is about attracting highly talented people and then giving them the best tools to do their work. The CJB is on the right course. I look forward to continuing to see the progress that this exemplary service will make in the future.



## Appendix A

1

**Privileged and Confidential  
Survey of Canadian Prosecution Models  
May 2016**

This survey is being used solely for the purposes of Federal Provincial Territorial work or the work of one or more of the members of Heads of Prosecution.

**Name of prosecution service and jurisdiction:**

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**Survey completed by:**

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1. Please describe the prosecution model that is employed in your jurisdiction; what services fall within scope; and the means by which they are delivered. If you have organizational charts, visuals and/or a ready-made description that captures how your prosecution service is structured, copies of these materials would be appreciated.
2. Are you going through a restraint exercise?
3. Describe the scope of the restraint.
4. Is it driven from the centre of government or is it internal to your Ministry?
5. Do you have a lawyer's association in your jurisdiction?

6. Is there a collective agreement?
7. Does the collective agreement guarantee automatic raises for junior prosecutors? For senior prosecutors?
8. Have you been obliged to practice vacancy management?
9. What are the two most promising experiments being undertaken in your prosecution service?
10. What are the positives about them?
11. Do they promise savings, cost defrayal or slowing of growth?
12. Will they facilitate systemic improvement and how so?
13. Are you under pressure from your centre because of reduced crime rates, and/or reduced charges, and what challenge has this created for you?
14. Have there been any layoffs in your prosecution service?
15. Do you have paralegals as part of your staff and what areas of work are assigned to them?
16. Do you have any major technology projects or initiatives underway and what are issues do they seek to address?

17. Are you measuring the “complexity” of your workload in any way?

18. Additional Comments that you think may be of interest to the recipients of this survey.

Thank you.

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