
NEWS RELEASE

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Office of the Premier
Ministry of Justice and Attorney General

Further action on justice reform launched

VANCOUVER – The Province is launching a reform initiative to address B.C.’s justice system and identify actions that government, the judiciary, the legal profession, police and others can take to give British Columbians more timely and effective justice services, Premier Christy Clark announced today.

“British Columbians expect and deserve a justice system that deals with matters in an efficient, timely and fair way,” said Premier Clark. “The crime rate is dropping but we’re still seeing increases in the number of cases delayed and stayed. This tells us systemic changes are needed. Our reform initiative will identify long-term, fiscally responsible solutions that improve outcomes and accountability for the significant investments we’re already making.”

Ministry accountabilities are being adjusted to allow current Attorney General and Solicitor General Shirley Bond to put her full focus on the reform agenda. She will now serve as Justice Minister and Attorney General and spearhead significant initiatives already underway across the policing and justice system. Responsibility for the Public Sector Employers Council and the Insurance Corporation of British Columbia will fall under the Minister of Finance. Responsibility for both the areas of liquor and gaming will rest with the Minister of Energy and Mines.

Geoffrey Cowper, QC, has been appointed by Bond as chair of this critical review. Cowper, one of Canada’s most respected litigators and known for his work in many areas, including administrative and public law, is former chair of the Legal Services Society and former B.C. chair of the American College of Trial Lawyers.

Cowper will consult with the judiciary, Crown counsel, the legal profession, police and others to look at challenges set out in a new Green Paper, called “Modernizing British Columbia’s Justice System”, released today. He will identify the top issues that are affecting the public’s access to timely justice and what can be done to ensure the efficiencies already underway have the desired impacts while respecting the independence of the judicial system.

“A vital element of our reform initiative will be a dialogue with the judiciary about how we can make improvements and find efficiencies,” said Bond. “Government is one element of a system of interconnected and largely independent players. I know that, by working together, we can ensure the justice system is more transparent, more accessible and more responsive for British Columbians.”

As justice minister, Bond is implementing a suite of initiatives that will achieve significant efficiencies across the two ministries. These include a new Family Law Act, an integrated planning secretariat across the ministries, a justice-system wide business intelligence project, and engagement with British Columbians on the development of a new policing strategy.

In addition, Bond will advance work on the proactive release of new justice system data in the public domain. The minister has also asked Legal Services Society for advice on efficiencies that can be achieved. As a part of the broader justice reform initiative, an outside review of British Columbia's system for approval of prosecutions will also be conducted.

The justice reform initiative being released today follows extensive work since last August to assess growing resource pressures on the justice system. A panel of deputy ministers within government worked closely with the Internal Audit office of the Ministry of Finance to review operations of the ministries of Attorney General and Solicitor General and Public Safety. The Internal Audit review is also being released today.

The Green Paper is the foundation for a substantive debate in the coming months. Cowper will report to government as he develops recommendations around engagement of key institutions and stakeholders. Government will provide periodic updates in response to his recommendations and he will make his final report to government by July 2012.

Quick Facts:

- B.C. spends over \$1 billion annually on its public safety and justice system.
- Since 2004, crime in British Columbia has declined consistently – 33 per cent in six years and a drop of 45 per cent since the all-time high in 1991.
- Crime has declined at a faster rate than in any other province.
- 13,000 fewer new provincial criminal court cases were heard this year than 10 years ago.
- The length of adult and youth criminal cases in Provincial Court has been stable over last 10 years.
- More than 50 per cent of adult and youth criminal cases in Provincial Court were completed within 90 days of charges and 85 per cent within a year.
- Six per cent of cases of adult and youth criminal cases in B.C. Provincial Court go to trial, with the rest resolved out of court.
- Fifty-eight sheriffs will have graduated and be working in B.C. courthouses by April 2010.
- Government has appointed 23 judges in the last two years, since January 2010.
- The Province provided almost \$68.6 million in legal aid in 2011-12, including \$2.1 million in new funding for family law services.
- Despite this, judicial stays of proceedings have almost doubled in the last year, from 56 in 2010 to 109 in 2011.

Learn More:

- Internal Audit review: www.ag.gov.bc.ca/public/JusticeSystemReview.pdf
- Green Paper: www.ag.gov.bc.ca/public/JusticeSystemReviewGreenPaper.pdf
- For information on the criminal justice system: www.justicebc.ca

Five backgrounders follow.

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BACKGROUND 1

Biography for Geoffrey Cowper, QC

Geoffrey Cowper, senior counsel and leader of international law firm Fasken Martineau's litigation and dispute resolution group, has served as counsel in a broad variety of significant cases, both in Canada and abroad.

Cowper was called to the B.C. bar in 1982 and to the Yukon bar in 1987. He was appointed Queen's counsel – a designation recognizing exceptional merit and contribution to the legal profession – in 1997.

He was counsel to commissions of inquiry into the B.C. justice system's response to the death of Frank Paul and provincial securities regulation. He has also been counsel in the Supreme Court of Canada on cases involving constitutionality of legislation, Charter rights, commercial, tort and administrative law issues.

Cowper has served on the boards of a number of community, charitable and legal organizations, including as a director and chair of the Legal Services Society (LSS) for three terms. During that period, LSS developed an international reputation for innovative approaches to cost-effective access to justice. Cowper has also lectured on a variety of topics of legal and public interest.

He was recently listed among the National Post's Best Lawyers in Canada and was named 2010 Vancouver Corporate and Commercial Litigator of the Year by Best Lawyers, a well-respected peer-review publication in the legal profession.

BACKGROUND 2

Charge assessment process review underway

As part of the broader reform review, Gary McCuaig, QC has been engaged as an external expert to review B.C.'s criminal charge assessment process to determine whether it is the most effective model for making prosecution decisions.

British Columbia is one of three provinces that use Crown prosecutors to make decisions about whether people who have been the subject of a police investigation should be charged with criminal offences. In other provinces, including Ontario and Alberta, police make the decision to lay charges, with the Crown prosecutor reviewing the charges afterwards and determining if they will continue the prosecution. Crown counsel have authority under the federal Criminal Code to terminate a prosecution by staying the proceedings.

B.C.'s current charge assessment system is based on two criteria. Charges are approved and a charging document is sworn if a review of the police report to Crown prosecutors determines that, based on the available evidence, there is a substantial likelihood of conviction and that the prosecution is required in the public interest. Both criteria must be met to ensure prosecutions only proceed in cases with solid evidence and where the public interest requires a criminal prosecution. The process recognizes initiating a criminal prosecution is a serious matter and impacts the liberty and security of accused, who are presumed innocent until their guilt is proved beyond a reasonable doubt by a court.

McCuaig spent just over 30 years with Alberta Justice. For the first 22 years of that time, he was a member of the Alberta Crown Prosecutors office, firstly as a line Crown and then as chief Crown prosecutor for 10 years (1990-2000). From 2000 to 2008, he held positions relating to organized crime and then education and knowledge management. Since retiring in 2008, he has been mentoring junior prosecutors in Edmonton and assisting in teaching a search warrant course to Alberta police officers.

McCuaig will consider the charge assessment process in B.C. and elsewhere in Canada. He will report to the attorney general with recommendations and they will also be shared with Cowper.

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BACKGROUND 3

Open data plan makes justice statistics public

Provincial, regional and local court statistics will be posted to a new data dashboard on the Ministry of Attorney General's JusticeBC website to give the public information about the justice system's operations and progress. With this process, government is inviting the judiciary to contribute and engage in efforts to increase public information as they relate to the courts.

Among data to be made available over the next few weeks are:

- Individual courthouse sitting hours.
- Number of new cases and court appearances.
- Number of concluded cases by number of days they took to resolve.
- Number of documents filed in civil, family and criminal law cases.
- Number of cases at the B.C. Provincial, Supreme and appeal court levels.

For almost a year, justice statistics have been posted online at: www.data.gov.bc.ca
A court finder application can be used to locate courthouses and statistics on local court usage, such as the number of pending court cases and average time required to conclude a court matter. A version for use on smart phones and other mobile devices is being developed for release later this spring.

The initiatives support the B.C. government's July 2011 open government announcement. DataBC currently has nearly 2,500 free datasets for citizens to use or repurpose under an open data license. JusticeBC is a web portal on criminal justice services.

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BACKGROUND 4

Legal aid services review

The Province has asked Legal Services Society (LSS) for its advice on achieving efficiencies in legal aid services.

The society will conduct a thorough examination of B.C.'s legal aid system to determine if the costs of delivering current services can be reduced so that savings can be used to expand legal aid services. LSS has been asked to identify ways it could support efficiencies elsewhere in the justice system that may permit reallocation of funding to legal aid.

The Province has asked LSS to report back by July 1, 2012 on:

- New legal aid service delivery models that assume no funding increase.
- Changes to LSS tariffs to lawyers who provide legal aid services as an incentive to make the justice system more efficient.
- The use of telecommunications and the Justice Centre, a centralized service where judicial justices hear bail and other matters.
- How LSS might diversify its revenue stream to expand non-governmental revenue and permit funding stability.

LSS will look at experiences in other provinces, consult with justice system stakeholders and consider concerns of the bar that have resulted in current duty counsel service withdrawals. Findings will be made public.

The Province provided LSS with core funding of \$68.6 million in 2011-12. That included \$2.1 million in new funding for representation for families with emergency family matters related to custody and access and to represent parents with children in Ministry of Children and Family Development custody.

LSS has a statutory role to advise the attorney general on legal aid and access to justice. The society is a publicly funded agency responsible for making day-to-day operating decisions about legal aid policies and services. LSS provided legal assistance to nearly 28,000 low-income individuals in 2010. B.C. has among the most generous financial eligibility guidelines for legal aid in Canada.

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BACKGROUND 5

Justice Reform: Ten Challenges, Ten Proposals

- A Green Paper is issued by government to bring issues to the public and outline reasons why it is seeking solutions.
- It indicates that the government is committed to announcing legislation or other meaningful action in a subsequent White Paper.
- Government's next steps will be informed by a review of the justice system, consistent with the Green Paper, as well as contributions from the public, employees and others.
- A condensed list of issues suggesting where improvement may be made in the justice system has been included as part of the Green Paper. It is called Ten Challenges, Ten Proposals.

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

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

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

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

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

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

A. JUSTICE SYSTEM CULTURE

Justice reform involves addressing three cultural aspects of the system in B.C.:

- How independence is interpreted.
- Resistance to systems thinking.
- Practitioner-dominated management.

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

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

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

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

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

- Anecdotal problem solving.
- A preference for expert opinion over measurement.
- Failure to apply systems thinking.
- Sacrificing of system-wide benefits for fear of failure in a single instance.

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

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

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

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

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

B. INEFFICIENT SYSTEM MANAGEMENT

The system has several inefficiencies immune to more tentative reform.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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