

DELAYING  
JUSTICE IS  
DENYING  
JUSTICE



## AN URGENT NEED TO ADDRESS LENGTHY COURT DELAYS IN CANADA

Report of the Standing Senate Committee on  
Legal and Constitutional Affairs

The Honourable Bob Runciman, Chair  
The Honourable George Baker, P.C., Deputy Chair

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*For more information please contact us  
by email [leg-jur@sen.parl.gc.ca](mailto:leg-jur@sen.parl.gc.ca)  
by phone: (613) 990-6087  
toll-free: 1 800 267-7362  
by mail: The Standing Senate committee on  
Legal and Constitutional Affairs,  
Senate, Ottawa, Ontario, Canada, K1A 0A4  
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## **THE COMMITTEE'S STUDY: INTRODUCTION AND SUMMARY**

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On 28 January 2016, the Senate of Canada authorized the Standing Senate Committee on Legal and Constitutional Affairs (the Committee) to undertake a study on delays in Canada's criminal justice system and to review the roles of the Government of Canada and Parliament in addressing such delays.<sup>1</sup>

From February through May 2016, the Committee heard from 75 witnesses during public hearings both in Ottawa and in Halifax and held fact-finding meetings in Nova Scotia. These witnesses included lawyers, government officials, legal experts, former and sitting judges, victims and victims groups, service providers, police, and mental health and addictions experts, among others.

This interim report provides an overview of the Committee's work so far and sets out observations concerning the causes and consequences of delays as well as some of the key ideas and innovations currently being explored in Canada to address them. Though the Committee has learned much about the many facets of this complex issue, its work for this study is not yet done. The Committee intends to further explore the potential solutions to the issues summarized in this report and hopes to hear new proposals and ideas from witnesses as it holds additional hearings in Ottawa and in other parts of the country during the 42nd Parliament.

The broad consensus the Committee gathered from witnesses is that delays are a significant problem in Canada that demands attention. In 2013-14, the median time from the laying of a charge to a case's final disposition for an adult was 123 days and the median number of court appearances was five.<sup>2</sup> For homicide cases, the median time was 451 days, followed by sexual assault cases at 321 days, and attempted murder cases at 314 days. Cases involving a trial (as opposed to the large majority of cases that are resolved without a trial by guilty pleas, withdrawal of charges, etc.) often require a lot of time and resources to hear all of the testimony, legal arguments and victim impact statements.

These statistics do not necessarily reflect the fact that many cases can take longer than the median time. The Committee heard significant evidence that the number of court appearances and time needed to resolve cases vary widely between provinces, and may even vary within the same jurisdiction or city. Some parts of Canada are experiencing serious challenges in dealing with delays. As an example, the Honourable François Rolland, former Chief Justice of the Quebec Superior Court, informed the Committee on 13 April 2016 that it is not possible to get a Superior Court of Quebec date for a trial set in Montreal before 2017, there are a few dates available in 2018, and dates in 2019 are already being booked. The state of affairs is similar in Quebec City.<sup>3</sup> This situation is critical. Canadians deserve a system that is far more accessible and efficient.

“Judges do need to ensure that they control the proceedings in the courtroom [...] I think judges, generally speaking as a profession, could do a lot better in terms of managing how things go in court.”

Judge Raymond Wyant, Senior Judge of the Manitoba Court,  
Former Chief Judge of the Provincial Court of Manitoba

The consequences of delays on Canadians are significant and immediate action to address them is required by all levels and branches of government. The Committee was particularly concerned about the effect that lengthy trials have on the people involved, especially the added stress and worry for victims, accused persons and witnesses. During our hearings, several witnesses underscored that if one thing would help reduce the feelings of revictimization that victims frequently experience during criminal proceedings, it would be to reduce delays.<sup>4</sup>

Multiple adjournments and court appearances also place an additional strain on already limited court resources. When delays become excessive, the consequence can be serious. If a judge finds that a person charged with an offence has been denied his or her constitutionally guaranteed right “to be tried within a reasonable time” under section 11(b) of the *Canadian Charter of Rights and Freedoms* (Charter),<sup>5</sup> that judge may order a stay of proceedings and charges may be dismissed. This order results in charges not receiving their proper consideration in a court of law.<sup>6</sup> To best serve Canadians, the justice system must be both fair and efficient. Stays of proceedings, while they serve as a remedy to preserve the constitutional right to a trial within a reasonable time, mean that the system has been neither fair nor efficient.

Three very recent Supreme Court of Canada decisions[i] in which stays of proceedings were ordered due to unreasonable delays highlight the urgency of addressing this issue. In *R. v. Jordan*, the majority set out a new framework which focuses on encouraging all participants in the criminal justice system to cooperate in achieving “reasonably prompt justice.”[ii]

The Supreme Court set out a presumptive ceiling beyond which delays are presumed to be unreasonable, unless exceptional circumstances [iii] are alleged by the Crown. This ceiling is 18 months for cases tried in the provincial court and 30 months for cases in the superior court (or cases tried in the provincial court after a preliminary inquiry). If the Crown cannot rebut the presumption of unreasonableness, a stay of proceedings will follow. A transitional framework applies to cases currently in the system, to attempt to avoid a post-Askov catastrophe where 50,000 charges were stayed. The minority concluded that the majority’s approach exceeds the role of the Court and that creating fixed or presumptive ceilings “is a task better left to legislatures.”[iv]

Also, the minority warned that the majority’s new framework and transitional provisions “will not avoid the risk of thousands of judicial stays of proceedings.”[v]

The causes of delays in Canada are complex and a full review is beyond the scope of this interim report. Some arise from inherent challenges in the nature of our adversarial criminal law system. Our system also aims to prevent wrongful convictions, but in doing so imposes at times onerous, but necessary, constitutional obligations on police and prosecutors. The Committee also learned that the criminal justice system is often under-resourced to meet the demands placed on it. Innovative practices could ensure that resources are used more efficiently, and the Committee will explore these with witnesses.

An important shift in attitudes among stakeholders may be necessary: at the very least, lawyers and judges need to take proactive and collaborative steps in the belief that delays can and will be reduced. Judges have tools to ensure that matters proceed more expeditiously, but may not be receiving sufficient training or guidance on how to make this happen. The Committee recognizes that the lack of robust case and case flow management by the judiciary is perhaps the most significant factor in contributing to delays. Judicial independence is a cornerstone of our system, but it must be bolstered by



developing and sharing successful management tools and practices. **As set out below, the Committee's first recommendation calls on the Government of Canada to work with the provinces, territories and the judiciary to examine and implement best practices in case and case flow management to reduce the number of unnecessary appearances and adjournments and to ensure criminal proceedings are dealt with more expeditiously.**

Our justice system can only function efficiently when there are enough judges to handle criminal proceedings in a timely manner. There have been too many judicial vacancies in provincial superior courts needing to be filled across Canada for too long. A more expeditious and effective appointment system is needed to urgently address this situation. **The Committee's second recommendation is for the Government of Canada to take immediate steps to ensure that a system is in place to make the necessary judicial appointments to provincial superior courts as expeditiously as possible.**

There are innovative solutions being explored and put into practice in Canada to address delays. The Committee wishes to specifically highlight the promise that restorative justice programs and therapeutic courts (or "alternative courts"), such as drug courts and mental health courts, hold for increasing the fairness and overall efficiency of our justice system. Courthouses and related services could also be organized more efficiently to address the varied needs of participants in the justice system, whether victims or accused persons. The Committee also discussed different ways court proceedings can be managed, including during mega-trials and the practice of overbooking courtrooms to ensure none are left unused (i.e., "shadow courts"). **The Committee's third recommendation calls for the Government of Canada to show leadership in working with provincial and territorial governments to help share best practices concerning mega-trials, restorative justice programs, therapeutic courts, "shadow courts" and integrated service models for courthouses, and to help implement these in appropriate circumstances.**

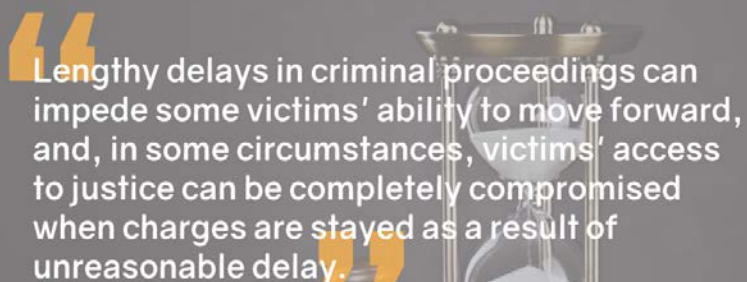
Witnesses also discussed technological solutions that are being developed, or that could be developed, to help modernize court proceedings and also the manner in which accused persons are monitored so they do not need to be detained in remand centres. **The Committee's fourth recommendation calls for the Government of Canada to take the lead and invest greater resources in developing and deploying appropriate technological solutions to modernize criminal procedures.**

## CONSEQUENCES OF DELAYS

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### A. The Impact on Victims and Witnesses

The Committee has learned a lot about the impact that lengthy criminal proceedings have on not only the efficiency of the justice system, but also on the people involved. The witnesses we heard who presented the views of victims



**“Lengthy delays in criminal proceedings can impede some victims' ability to move forward, and, in some circumstances, victims' access to justice can be completely compromised when charges are stayed as a result of unreasonable delay.”**

Sue O'Sullivan, Federal Ombudsman for Victims of Crime

emphasized how stressful delays can be and how these can result in feelings of revictimization.<sup>7</sup> Every adjournment means that victims must endure further worry and anxiety as they await closure in matters that were likely among the most traumatic experiences of their lives. Every additional court appearance requires that they prepare to revisit the upsetting events surrounding the crime and to see the accused person in court once again. They may have had to take time off work or travel long distances to get to the courthouse, usually incurring additional personal expenses in order to do so. The most significant impact on victims, as well as on the integrity of our justice system, occurs when a stay of proceedings is ordered by a judge due to a violation of section 11(b) of the Charter. This experience can be particularly devastating for victims.<sup>8</sup> These emotional and financial costs may also be borne by witnesses.

The Committee has had an opportunity through its work in studying various bills in recent years to see the promising emergence of a greater focus on victims' rights in many aspects of the criminal justice system, with the passing in 2015 of the *Canadian Victims Bill of Rights*<sup>9</sup> being a particular achievement. The Committee intends to continue to monitor the implementation of this law and see whether it proves to be effective in bringing about a necessary transformative shift in how the justice system responds to the needs of victims.

#### **B. The Impact on Accused Persons and the Bail/Remand Problem in Canada**

The stress of long trials on accused persons – who remain innocent until proven guilty – can also be significant. Accused persons are not financially compensated for what might be a lengthy period of pre-trial incarceration. They may also have lost a job or accommodation, experienced damage to personal relationships while incarcerated, and spent a considerable amount of money on legal fees. If an accused person is found not guilty, they have likely endured many months of being stigmatized and perhaps even ostracized in their community and will have to rebuild their lives with their own resources.

Another grave concern for many witnesses and members of this Committee is that the remand population has increased three-fold over the last 35 years. Since 2004–05, the number of people held in remand has been larger than the number of offenders serving custodial sentences in a provincial or territorial correctional facility.<sup>10</sup> Being held on remand while awaiting trial is an option intended only to hold in custody those who pose a risk of not appearing for their trial dates or who pose a risk to society.

The Committee strongly urges governments in Canada to take immediate steps to address this problem. In addition, the Government of Canada should take into consideration that there is an increased interaction with the criminal justice system for certain racialized groups. As Professor Michelle Williams from Dalhousie University discussed with the Committee, in the past 10 years, there has been a 75% increase in the incarceration of African Canadians and Aboriginal peoples continue to be incarcerated at a disproportionate rate.<sup>11</sup>

**“ I would say that [delays] are bad for the accused and extremely bad for the victims, for Canadian society and for the credibility of our justice system, which is valued. ”**

**The Honourable François Rolland, Former Chief  
Justice of the Superior Court of Quebec**



### C. Impact on the Justice System

Witnesses highlighted that another critical consequence of lengthy trials is the erosion in the confidence many Canadians have in the efficiency and fairness of the criminal justice system.<sup>12</sup> The phrase “justice delayed is justice denied” applies here. As the delay increases, the connection between the commission of an offence and its condemnation weakens. Swift, predictable justice, which many see as the most powerful deterrent of crime, diminishes when delays become too great. Delays also have an impact on the quality and reliability of evidence since accused persons’ and witnesses’ memories will be less clear as time passes.

## CAUSES OF DELAYS

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### A. Case and Case Flow Management by the Judiciary

The Committee heard that the varying lengths of trials across the country are, in part, due to the differing approaches to case and case flow management employed by chief judges and trial judges. Case management is here used in reference to individual criminal proceedings, and case flow management to the broader administration of criminal cases through the system. Witnesses spoke about the need for judges to ensure that they are effectively controlling the proceedings in courtrooms through case management to ensure a timely resolution of the matters before them.<sup>13</sup> More specifically, some witnesses noted that in some cases chief judges are provided with little or no training specifically pertaining to management;<sup>14</sup> though former Justice Rolland noted that such training is offered in some contexts, such as through the National Judicial Institute.<sup>15</sup>

Judges are the masters of their courtrooms and the *Criminal Code*<sup>16</sup> provides many tools for judges to use in order to ensure cases proceed efficiently. The recent decision by Justice Cournoyer of the Superior Court of Quebec in *R. v. Bordo*<sup>17</sup> is an excellent example of a judge

taking the time to set out how cases can be better managed and stricter rules enforced to make certain that all parties meet their responsibilities to ensure a timely resolution. Among other things, this decision sets out the principles and factors that judges should apply when establishing schedules, imposing deadlines or setting time limits for preliminary motions, as well as the steps that responsible lawyers should be taking to assist the court in promoting fair and efficient criminal trials. The Committee wishes to underscore the importance of ensuring that sufficient training in case management is provided to judges and to suggest that future evaluation of judicial case and case flow management across Canada may assist in determining whether it has been effective.

The challenges inherent in case and case flow management have been very apparent during large and complex trials, often called “mega-trials,” which involve numerous charges against multiple accused persons and most often pertain to organized crime, gang-related activity or terrorism. Former Chief Justice Rolland discussed Operation SharQc, a police investigation that resulted in 156 persons being

“The key to effective backlog and delay reduction in the criminal courts is the involvement and leadership of the judiciary in implementing principles of caseflow management.”

Professor Carl Baar, Brock University

charged with crimes in Quebec. He provided one anecdote that illustrated the complexity of this affair: “[I]n the SharQc case lawyers were filing preliminary motions and confirmed that, if it took two minutes to open each electronic wiretap file and a person was working on doing so 24 hours a day, seven days a week, it would take that person seven years and two days to consult all of the evidence, and that is not even taking into consideration the upcoming trial.”<sup>18</sup> The hearings flowing from these arrests required significant resources and intensive administrative planning. While over 100 of those accused plead guilty, a stay of proceedings was ordered in October 2015 for five accused and 31 were released in 2011 because of unreasonable delays. The Quebec Superior Court and the Quebec Court of Appeal were critical of the prosecutors in this case for their lack of preparation and for proceeding with all the charges without ensuring that Quebec’s justice system could handle them efficiently.<sup>19</sup>

Former Chief Justice Rolland also discussed the importance of proper planning and the commitment of sufficient resources prior to proceeding with large criminal cases.<sup>20</sup> He emphasized the importance of facilitation conferences and coordination between Crown counsel and the judge in order to limit the number of charges being laid and evidence being brought forward in order to make trials more manageable.

While important work has been done in recent years to address the challenges of mega-trials,<sup>21</sup> understanding the lessons learned from past experiences, ensuring that provinces have sufficient resources and sharing best practices for proper planning for large trials is again where the Government of Canada can take a leadership role to ensure that properly managed mega-trials remain a viable option for provinces, if they determine these are an appropriate course of action.

## **B. Inherent Challenges: Contemporary and Constitutional**

One conundrum that was put before the Committee is that overall crime rates have been declining in Canada since the early 1990s and yet there does not seem to be a reduction in the overall costs to the justice system or trial delays.<sup>22</sup> Rather, it appears that the justice system is over-burdened and resources are stretched thin.

A number of explanations for this seeming inconsistency have been offered. Chief Jean-Michel Blais of the Halifax Regional Police suggested that the growing complexity of police work in dealing with the globalization of crime and the increasing use of sophisticated technologies to commit crime take up more police time and resources than in the past. He also added that there is a greater focus now than in the past on the conduct of police officers (and others) in carrying out investigations and gathering evidence.<sup>23</sup>

Some witnesses discussed commonly held concerns about the demands that Charter jurisprudence has placed on police and Crown prosecutors.<sup>24</sup> The Charter guarantees certain legal rights to all persons charged with an offence; this is part of ensuring that accused persons can make full answer and defence.<sup>25</sup> A concrete example of an obligation of the Crown is its legal duty to disclose all relevant information to the defence. The Supreme Court of Canada has held that the fruits of an investigation which are in the Crown’s possession are not its property for use in securing a conviction, but the property of the public to be used to ensure that justice is done.<sup>26</sup> While this disclosure obligation should lead to a lower number of wrongful convictions, fulfilling it can lead to a delay in getting to trial. Such

delays are more likely to occur in cases where there is a great deal of electronic evidence resulting from such things as wiretaps and searches of computer databases.

### **C. Resources**

Another significant impact on the efficiency of the justice system is the added cost involved with each additional court appearance. Courtrooms must be fully staffed and a judge must preside over them, and the funding for this must come from budgets and resources that are already stretched thin. The Committee heard a great deal of testimony about the challenges faced by many regions lacking judges and other court resources to meet their needs. As stated earlier, there are severe problems emerging in parts of the country.

The need for more judges to handle the number of cases awaiting trial is a concern that has been frequently raised.<sup>27</sup> Compelling arguments are being made for taking immediate action. The situation noted by former Chief Justice Rolland in Quebec, where trials at the Superior Court are being scheduled for dates that are over a year away, is a clear indication that action is required.<sup>28</sup> The *Judges Act* sets out the number of judges to be federally appointed to provincial superior courts.<sup>29</sup> The number of recognized judicial vacancies under this Act has been too high for too long.<sup>30</sup> Some recent appointments by the Government of Canada are certainly welcomed, but do not address the full urgency of this matter.

The Committee heard from many witnesses that legal aid funding is insufficient across the country.<sup>31</sup> Among other concerns, this has resulted in an increase in accused persons who represent themselves in court because they do not qualify for legal aid and cannot afford a lawyer. As lawyers can help accused persons navigate the complexities of criminal law and court rules, their absence requires that judges take an active role in helping unrepresented persons understand court procedures and their rights. This further contributes to delays.

The Committee was presented with a great deal of evidence that a further contribution to delays are the various ways in which the valuable time of judges and other court workers is inefficiently used in dealing with administration of justice offences.<sup>32</sup> This category of offences includes: failure to appear in court, breach of a probation order, being unlawfully at large, and failure to comply with an order.<sup>33</sup> Twenty-three percent of all completed adult criminal court cases in Canada dealt with administration of justice offences.<sup>34</sup> Some witnesses noted that when conditions imposed on offenders are too onerous or do not properly consider their personal circumstances, then they are more likely to be breached.<sup>35</sup> For instance, an order that an offender who has addictions must abstain from drugs and alcohol may not be realistic without other supports being offered.

Over the course of this study, witnesses raised many other concerns that pertained to inefficient uses of court resources and court time that the Committee will continue to explore in further hearings. For instance, many routine matters currently dealt with by judges may not require judicial intervention and the use of courtrooms and court staff. Legal counsel, police officers, accused persons and witnesses may wait at the courthouse for many hours in order to address a procedural matter that takes only a few minutes and ultimately may result in an adjournment to another day. As discussed further below, some of these matters could be overseen by court officials other than judges. Some matters may not

require anyone's presence in a courtroom as they can be dealt with using remote technology. The Committee shares the conviction of witnesses that there are ways to improve the efficiency of courtroom management.

## ADDRESSING DELAYS

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The Committee is encouraged by the many dedicated efforts being undertaken across the country to address the issue of delays in criminal trials and, more broadly, to ensure that Canadians have a fair and efficient justice system. The Committee wishes to highlight two encouraging innovations: restorative justice programs and alternative courts, or "therapeutic courts". The Committee is aware that Canadian governments have been involved in research and policy development with regard to restorative justice and alternative court models for many years. Despite this, there needs to be a better assessment of the current patchwork of programs and studies in order to guide governments on successful models and best practices to follow. The Government of Canada can take a leadership role in this endeavour to assist the provinces in implementing local solutions.

### A. Alternatives to Traditional Criminal Justice

#### 1. Restorative justice



The Committee has begun to explore how restorative justice can improve overall efficiencies in our justice system, and thereby free up limited resources to address delays. The Committee travelled to Halifax to learn about Nova Scotia's Restorative Justice Program, which provides opportunities for accused persons to take responsibility for their offences, focus on the causes of their actions, participate actively in achieving justice in the community, and offer support to victims. Restorative justice attempts to go beyond the traditional crime and punishment model by facilitating such opportunities as a meeting between the offender and victim. The Nova Scotia program is only available for youth from 12 to 17 years old, although pilot projects involving adults are currently being offered in specific locations. The Committee heard compelling testimony from Paula Marshall of the Mi'kmaq Legal Support Network that the program has also developed initiatives that can help address the unique cultural dynamics of

Aboriginal communities and thereby respond to particular justice issues affecting them (which the Committee recognizes require specific attention moving forward with its study).<sup>36</sup> The Committee believes restorative justice programs show much promise and intends to investigate these matters further as its study progresses.

## 2. Therapeutic/Alternative Courts

“The Committee must look at and consider whether the criminal justice system is really structured to handle much of what it receives. It receives the addicted, the homeless, the poverty stricken and the mentally ill, but the criminal justice system was not meant to really deal with those sorts of issues, and more and more they are taking up the time.”

The Honourable Patrick J. LeSage, former Chief  
Justice of the Ontario Superior Court of Justice

The Committee also hosted panels concerning what are often referred to as therapeutic or alternative courts and include mental health courts and drug courts. Many witnesses underscored that one of the key problems in our current justice system is that there are far too many individuals being incarcerated who should be receiving treatment for mental illness or addictions.<sup>37</sup> This systemic problem has been referred to in studies as “the criminalization of mental illness.”<sup>38</sup> The Correctional Investigator of Canada found in 2011-12 that 36% of federal offenders were identified at admission as requiring psychiatric or psychological follow-up, and that 45% of male inmates and 69% of female inmates received institutional mental health care services.<sup>39</sup> The Committee also heard from Dr. Alexander Simpson of the Centre for Addiction and Mental Health that there is no consistent screening at courts for mental health problems.<sup>40</sup> Finally, the Committee was informed that a majority of offenders in Canadian prisons have histories of substance abuse, as studies show that 16% of the male federal inmates were dependent on alcohol and 31% on one or more illicit drugs.<sup>41</sup>

While these persons may be guilty of committing a crime, their rehabilitation and successful reintegration into society will only succeed if they receive appropriate treatment. If persons with addictions and mental health issues do not receive proper rehabilitation programming, they are more likely to reoffend or be found in breach of parole conditions. Where alternative court models can provide more efficient use of court resources and reduce recidivism rates, then they may consequently produce a reduction in court delays.

Several witnesses also spoke about the value of police discretion in determining whether people with mental health issues or addictions should in some situations necessarily be arrested and charged with a crime or offered an opportunity to participate in pre-charge diversion programs tailored to their health needs. Such discretion can only be truly effective if these programs are available.<sup>42</sup> Canadian governments should be evaluating the ways in which police can be given more tools and options for dealing with such persons outside the traditional criminal justice system.

To explore these various issues, the Committee heard from experts in mental health and drug addiction and made a site visit to the Mental Health Court of the Dartmouth Courthouse. It learned about the Nova Scotia Mental Health Court Program, a voluntary offender-based program for adults who have been charged with a criminal offence and have a mental disorder but are competent to participate in the criminal justice system. Several requirements must be met to be admissible to the program, including: the accused has been charged with an offence under the *Criminal Code* or the *Controlled Drugs and Substances Act*;<sup>43</sup> the accused has a “mental disorder” (defined as a recognized, significant and persistent mental illness); there is a link between the criminal behaviour and the mental disorder; the accused voluntarily undertook a medical examination to determine and assess the mental disorder; the accused acknowledged responsibility for the act or omission; and, the Crown Attorney of the Mental Health Court has consented.

Chief Judge Pamela Williams of the Provincial and Family Courts of Nova Scotia discussed with the Committee how support plans developed by the Mental Health Court team of the Nova Scotia Mental Health Court were better at meeting the specific needs of clients and promoting recovery than the traditional correctional system.<sup>44</sup> This requires that those involved understand the unique strengths and challenges of a client, such as mental illness, motivation, and learning disabilities, and the use of evidence-based methods of criminal behaviour risk reduction.

## **B. Innovations in Administration**

The Committee also discussed with witnesses alternative ways of organizing courthouses and delivering the services offered to accused persons, self-represented accused persons, offenders, and victims. We heard many positive comments about an integrated multi-agency team located in Prince Albert, Saskatchewan that focuses on crime prevention and is often referred to as “the Hub.” By putting together health and social services, education organizations, police and other services in one location, there is an opportunity for collaboration and cooperation among relevant stakeholders.<sup>45</sup> This team approach can help with the identification of people at risk, information sharing and the development of integrated, targeted intervention strategies.

Professor Ian Greene of York University shared his research<sup>46</sup> in addressing delays in the Ontario court system and underscored that all participants in court administration and stakeholders in criminal proceedings need to be engaged in efforts to reduce delays and in creating a suitable management strategy, whether they are lawyers, judges or courthouse personnel. He noted that his research had prompted the creation of Court Advisory Committees in Ontario that bring together members of all stakeholder groups to discuss and make efforts to help courts work more efficiently. He added that their effectiveness can depend on the personalities involved and, in particular, the leadership of the chair of these committees.<sup>47</sup> The Committee supports the development of similar models that encourage collaboration among stakeholders.

Another intriguing idea the Committee intends to explore further was presented by Kevin Fenwick, Deputy Minister of Justice and Deputy Attorney General of the Government of Saskatchewan. His province’s “shadow court” initiative involves a practice of overbooking cases to avoid having empty courtrooms caused by many inevitable last-minute trial adjournments, stays of proceedings, and guilty pleas. He added that this increased the capacity to hear matters in court by 20%.<sup>48</sup>



### **C. Case Management Practices and Procedures**

The Committee has explored with witnesses various ideas that could be implemented in case management practices and procedures to reduce delays. Given the costs involved with operating courtrooms that are presided over by judges, an important consideration is whether some matters could instead be overseen by court officials, such as justices of the peace or prothonotaries (who operate under the *Federal Courts Rules*<sup>49</sup>).<sup>50</sup> Some witnesses cautioned that where Charter rights are engaged, this may still necessitate the involvement of a judge.<sup>51</sup> The Committee learned that practices within the provinces vary in terms of what matters are currently being heard by justices of the peace. Michael Waby of the Ministry of the Attorney General of Ontario commented on the benefits of having justices of the peace “being able to engage in a fairly wide variety of pre-trial, non-guilt determining processes.”<sup>52</sup> The practicality of this arrangement is again something that the Government of Canada can be assessing and assisting the provinces in implementing where appropriate.

The Committee has also heard concerns that the *Criminal Code* is itself part of the problem in that it has become “too complex” and merits a broad review.<sup>53</sup> The possibility of reforming the Code is beyond the scope of this study, but simple, practical amendments may produce more immediate results. For example, the Committee is considering whether changes that would allow a trial judge (provincial or superior court) who is first seized with a matter to hear all counts in charges against an accused (regardless of whether the counts are exclusively provincial or superior court jurisdiction) would be more efficient than allowing for the duplication of proceedings on the same criminal matter.<sup>54</sup>

The Committee has considered other practical steps that might be implemented by judges without the need for broader legislative reform, such as the imposition of stricter time constraints on the Crown to disclose prior to trial all evidence the prosecutor intends to use at trial.<sup>55</sup> Another step could be to make it regular practice that prior to trial, sealed warrants and sworn informations to obtain should be unsealed, vetted, edited and deemed to be part of normal Crown disclosure of evidence, unless there are valid reasons not to do so. This could thereby eliminate the need for additional special hearings on such matters later. One other possibility is to import into criminal proceedings something similar to the settlement conferences that are used in civil proceedings in order to help parties establish timelines and determine what issues can be resolved early.<sup>56</sup>

The Committee looks forward to exploring proposals for practical solutions such as these with witnesses in future hearings.

### **D. Provincial Initiatives Concerning Impaired Driving**

The Committee engaged in a great deal of discussion with witnesses about the issue of impaired driving charges and how, as Craig Fairbairn, Drug Treatment Court Liaison Officer at the Ottawa Police Service noted, these cases are “clogging up court systems.”<sup>57</sup> Impaired driving cases accounted for 11% of all criminal court cases in 2013-14, the highest proportion among all offence types.<sup>58</sup> These cases can be challenging for police in terms of gathering and presenting evidence,<sup>59</sup> they tend to take longer to proceed through the courts,<sup>60</sup> and in recent years in at least Ontario, the number of court appearances to resolve them has been increasing.<sup>61</sup>

In order to reduce the demands on the courts imposed by impaired driving cases, the Committee learned that British Columbia has been increasingly dealing with them under its road safety legislation.<sup>62</sup> Under the *Motor Vehicle Act*,<sup>63</sup> drivers who provide a breath sample with a blood alcohol concentration (BAC) over 50 milligrams of alcohol per 100 millilitres of blood (0.05), or who refuse to provide a breath sample, may be given licence suspensions and fines.<sup>64</sup> Drivers with a BAC over 0.08 may have additional sanctions imposed under either the *Criminal Code* or the *Motor Vehicle Act*. While most provinces have similar legislation in place, we learned that in British Columbia, police discretion is used to a greater degree to determine whether cases should proceed under the provincial scheme that uses less court resources and proceeds more efficiently, or under the *Criminal Code*, which uses more.

Some witnesses noted the positive impact this measure has had in reducing the number of cases in courtrooms significantly, thereby freeing up the time and resources of courts and police.<sup>65</sup> A study prepared for the Minister of Justice and Attorney General of British Columbia and referred to by Joseph Oliver of the Canadian Association of Chiefs of Police, showed that in 2011-12 impaired driving reports to Crown counsel had dropped by 8,000 cases.<sup>66</sup> This type of practical solution to use alternatives to the criminal justice system to deal with social problems is an example that Canadian governments should explore further in order to free up valuable court resources.

#### **E. Putting New Technologies to Work in the Justice System**

The Committee was also inspired by ideas being developed to use technology to improve the efficiency of our justice system. Ian Carter of the Canadian Bar Association discussed the fact that many routine court appearances often require that parties appear before a judge and spend unnecessary time in court simply for the opportunity to check in with a judge about progress on moving a case forward. It was suggested that these procedures could be done outside the courtroom between counsel using computer systems and thereby set timelines and report progress on a case without having to appear in court.<sup>67</sup> Kevin Fenwick noted that such a computer system could also be helpful for victims who wish to remain informed about the progress of a particular case and whether their attendance in the courtroom will be worthwhile on a particular date.<sup>68</sup>

**“With regard to court administration and management processes, they continue to be paper based, which causes delays. Technology needs to be used more effectively in the court system, which we are trying to do something about.”**

David Field, Legal Aid Ontario

Several witnesses, including the Canadian Association of Chiefs of Police, suggested that computer systems could be used to handle disclosure requirements. A challenge right now is that many computer systems that exist to manage disclosure are not compatible for all users.<sup>69</sup> A properly developed disclosure system should be made available across Canada to streamline disclosure procedures and formats. An important feature of such a database would be to ensure that it is “word searchable” by having an internal search engine to facilitate its use.<sup>70</sup> The Committee heard that the Province of Alberta has developed an electronic disclosure system and looks forward to making further inquiries about this in its future hearings.<sup>71</sup>

As mentioned above, another strain on resources is the effort and time required to have accused persons, offenders, witnesses or police attend personally in courtrooms for such matters as bail hearings, probation and other administrative offences, or other procedural matters. In remote communities, it involves considerable time and effort to have these persons attend in person. In some regions, courtrooms are using or considering using videoconferencing to avoid having to bring people to courtrooms in person.<sup>72</sup> Given that this technology is already available, it should be integrated into standard courtroom practices; in-person appearances should only be required when it is necessary, and where practical and cost-efficient for all parties.

Angela Condidis of Public Safety Canada informed the Committee that projects are under way to test electronic monitoring devices that could be worn by those on remand in order to track their location and provide an alternative to incarceration.<sup>73</sup> Resources should be committed so that this technology can be deployed at the earliest possible opportunity to address the remand crisis.

The Committee has only just begun exploring the potential for electronic systems to modernize court proceedings and the manner in which accused persons and offenders are monitored. It is optimistic that many of the proposals witnesses have discussed will alleviate some of the challenges Canada's justice system is facing. What is required is a proactive plan to develop and deploy such technology across Canada, for which the Government of Canada is in the best position to take the lead role.

## **CONCLUSION AND RECOMMENDATIONS**

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The Committee will continue to study trial delay and report more fully on its findings when its investigations have progressed further. There are steps that can be taken immediately, however, that will help alleviate some delays.

The Committee is mindful of the important role played by judges, and in particular the chief justices of the provinces who direct much of the court operations in their jurisdictions. It is also respectful of judicial independence. This being said, the lack of robust case and case flow management may be the single biggest contributing factor to court delays and efforts must be made by all relevant stakeholders to address this issue through better training, the sharing of best practices and proactive reform.

**The Committee recommends that the Government of Canada work with the provinces and territories as well as with the judiciary to examine and implement best practices in case and case flow management across Canada to reduce the number of unnecessary appearances and adjournments and ensure criminal proceedings are dealt with more expeditiously.**

The Committee is also aware of the pressures imposed on judges to manage the volume of cases before them, the high number of recognized judicial vacancies for provincial superior courts across the country and the clear demands from provinces that more judges are required in order to meet their needs. This situation requires urgent attention from the Government of Canada.

**The Committee recommends that the Government of Canada take immediate steps to ensure that an efficient and expeditious system is in place for making the necessary judicial appointments to provincial superior courts.**

We also urge the federal, provincial and territorial governments to work together to address trial delays as a matter of national importance. The Government of Canada should take a leadership role and invest resources in modernizing Canada's justice system and working to help the provinces implement new and alternative strategies in a manner that meets local concerns.

**The Committee recommends that the Government of Canada provide leadership and invest resources in collaborating with provincial and territorial governments in order to develop and make available research on best practices and implementation procedures for mega-trials and for alternatives to the traditional criminal justice system model, including restorative justice programs, integrated service models, "shadow courts" and therapeutic courts.**

Lastly, technological solutions that can improve the efficiency of criminal proceedings already exist or are being developed in parts of the country. These innovations should be made available and put into use across the country as quickly as possible. Specifically, computer systems that facilitate disclosure of evidence or that permit counsel to more efficiently deal with routine matters are very practical solutions that could presumably be integrated without much further delay. Similarly, electronic monitoring of accused persons as an alternative to remand should be put into practice as soon as possible. The federal government can take the lead on ensuring that progress is made on the development and deployment of such technologies.

**The Committee recommends that the Government of Canada provide leadership and invest resources to collaborate with provincial and territorial governments to develop and make available suitable technology and computer systems to modernize court procedures and court infrastructure and to more efficiently handle the monitoring of accused persons and offenders.**

## **APPENDIX A – LIST OF RECOMMENDATIONS**

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### **Recommendation 1**

**The Committee recommends that the Government of Canada work with the provinces and territories as well as with the judiciary to examine and implement best practices in case and case flow management across Canada to reduce the number of unnecessary appearances and adjournments and ensure criminal proceedings are dealt with more expeditiously.**

### **Recommendation 2**

**The Committee recommends that the Government of Canada take immediate steps to ensure that an efficient and expeditious system is in place for making the necessary judicial appointments to provincial superior courts.**

### **Recommendation 3**

**The Committee recommends that the Government of Canada provide leadership and invest resources in collaborating with provincial and territorial governments in order to develop and make available research on best practices and implementation procedures for mega-trials and for alternatives to the traditional criminal justice system model, including restorative justice programs, integrated service models, “shadow courts” and therapeutic courts.**

### **Recommendation 4**

**The Committee recommends that the Government of Canada provide leadership and invest resources to collaborate with provincial and territorial governments to develop and make available suitable technology and computer systems to modernize court procedures and court infrastructure and to more efficiently handle the monitoring of accused persons and offenders.**

## APPENDIX B – LIST OF WITNESSES

<p><b>Wednesday, February 3, 2016</b></p> <p><i>As individuals</i></p> <p>The Honourable Patrick J. LeSage, former Chief Justice of the Ontario Superior Court of Justice</p> <p>Carissima Mathen, Associate Professor, Faculty of Law, University of Ottawa</p> <p><b>Thursday, February 4, 2016</b></p> <p><i>Statistics Canada</i></p> <p>Yvan Clermont, Director, Canadian Centre for Justice Statistics</p> <p>Josée Savoie, Chief, Courts Program, Canadian Centre for Justice Statistics</p> <p><i>Department of Justice Canada</i></p> <p>Donald Piragoff, Senior Assistant Deputy Minister, Policy Sector</p> <p>Stephen Zaluski, General Counsel and Director, Judicial Affairs, Courts and Tribunal Policy</p> <p>Anny Bernier, Counsel, Criminal Law Policy Section</p> <p><b>Wednesday, February 17, 2016</b></p> <p><i>Public Prosecution Service of Canada</i></p> <p>Brian Saunders, Director of Public Prosecutions</p> <p>George Dolhai, Deputy Director of Public Prosecutions</p> <p><b>Thursday, February 18, 2016</b></p> <p><i>Canadian Bar Association</i></p> <p>Ian M. Carter, Treasurer, Criminal Justice Section</p> <p>Tony Paisana, Executive Member, Criminal Justice Section</p> <p>Gaylene Schellenberg, Lawyer, Legislation and Law Reform</p> <p><i>Criminal Lawyers' Association</i></p> <p>Leo Russomanno, Member and Criminal Defence Counsel</p> <p>Dominic Lamb, Member</p> <p><i>Canadian Council of Criminal Defence Lawyers</i></p> <p>William Trudell, Chair</p> <p>Greg DelBigio, Member</p> <p><b>Wednesday, February 24, 2016</b></p> <p><i>Ministry of the Attorney General of Ontario</i></p> <p>Michael Waby, Executive Director, Criminal Justice Modernization</p> <p>Agata Falkowski, Project Advisor, Criminal Justice Modernization</p> <p><i>Government of Saskatchewan</i></p> <p>Kevin Fenwick, Deputy Minister and Deputy Attorney General, Ministry of Justice</p>	<p><b>Thursday, February 25, 2016</b></p> <p><i>Canadian Association of Chiefs of Police</i></p> <p>Joseph Oliver, Assistant Commissioner, Technical Operations, RCMP</p> <p><i>Legal Aid Ontario</i></p> <p>David Field, President and CEO</p> <p>Marcus Pratt, Acting Director General, Policy and Strategic Research</p> <p><i>Nova Scotia Legal Aid Commission</i></p> <p>Karen Hudson, Executive Director</p> <p><i>Legal Aid BC</i></p> <p>Mark Benton, Chief Executive Officer</p> <p><b>Wednesday, March 9, 2016</b></p> <p><i>Canadian Association of Crown Counsel</i></p> <p>Rick Woodburn, President</p> <p><i>Ontario Crown Attorneys' Association</i></p> <p>Kate Matthews, President</p> <p>Laurie Gonet, Vice-president</p> <p><i>As an individual</i></p> <p>Ian Greene, Professor, Political Science, York University</p> <p><b>Wednesday, March 10, 2016</b></p> <p><i>Canadian Association of Elizabeth Fry Societies</i></p> <p>Kim Pate, Executive Director</p> <p><i>John Howard Society of Canada</i></p> <p>Catherine Latimer, Executive Director</p> <p><i>The Church Council on Justice and Corrections</i></p> <p>Rebecca Bromwich, Board Member and Treasurer</p> <p><i>Correctional Service Canada</i></p> <p>Andrea Markowski, District Director, Manitoba/Saskatchewan/North West Ontario District Office</p> <p><i>Probation Officers Association of Ontario</i></p> <p>Elana Lamesse, President</p> <p><b>Wednesday, March 23, 2016</b></p> <p><i>Canadian Police Association</i></p> <p>Tom Stamatakis, President</p> <p><i>As an individual</i></p> <p>Judge Raymond Wyant, Senior Judge of the Manitoba Court, Former Chief Judge of the Provincial Court of Manitoba</p> <p><i>British Columbia Civil Liberties Association</i></p> <p>Josh Paterson, Executive Director</p>
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**Thursday, March 24, 2016**

*Canadian Resource Centre for Victims of Crime*  
Heidi Illingworth, Executive Director  
*Office of the Federal Ombudsman for Victims of Crime*  
Sue O'Sullivan, Federal Ombudsman for Victims of Crime  
*Victimes d'agressions sexuelles au masculin (VASAM)*  
Alain Fortier, President  
Frank Tremblay, Vice-president

**Wednesday, April 13, 2016**

*As individuals*  
The Honourable François Rolland, Retired Chief Justice of the Superior Court of Quebec  
Anthony Doob, Professor, Centre of Criminology, University of Toronto  
Cheryl Webster, Associate Professor, Department of Criminology, University of Ottawa  
Carl Baar, Professor Emeritus of Political Science, Brock University

**Thursday, April 14, 2016**

*Ottawa Police Service*  
Craig Fairbairn, Drug Treatment Court Liaison Officer, Central Neighbourhood Unit  
*Rideauwood Addiction and Family Services*  
Marion Wright, Clinical Director  
*Canadian Centre on Substance Abuse*  
Rebecca Jesseman, Senior Policy Advisor  
*As an individual*  
Dr. Keith Ahamad, Clinical Assistant Professor, University of British Columbia

**Wednesday, April 20, 2016**

*Centre for Addiction and Mental Health*  
Dr. Alexander Simpson, Chief of Forensic Psychiatry  
*Mental Health Commission of Canada*  
Louise Bradley, President and CEO  
Patrick Baillie, Psychologist, Alberta Health Services  
*As an individual*  
Dr. John Bradford, Professor, University of Ottawa  
*Criminal Lawyers' Association*  
Anita Szigeti, Mental Disorder Portfolio

**Thursday, April 21, 2016**

*Ministry of Justice, Government of Saskatchewan*  
Dale McFee, Deputy Minister, Corrections and Policing  
Dr. Christine Cameron, President  
*Department of Justice Canada*  
Donald Piragoff, Senior Assistant Deputy Minister, Policy Sector  
Lucie Angers, General Counsel, Criminal Law Policy Section  
*Public Safety Canada*  
Gina Wilson, Associate Deputy Minister  
Angela Connidis, Director General, Corrections & Criminal Justice Directorate  
*Uniform Law Conference of Canada*  
Elizabeth Strange, Chair

**Friday, May 6, 2016**

*Province of Nova Scotia*  
Jocelyn Yerxa, Acting Director, Department of Seniors  
*Nova Scotia Advisory Council on the Status of Women*  
Stephanie MacInnis-Langley, Executive Director  
*Nova Scotia Barristers' Society*  
Emma Halpern, Equity and Access Officer  
*Cumberland Restorative Justice Society*  
Jennifer Furlong, Executive Director  
*As an individual*  
Jennifer Llewellyn, Professor, Schulich School of Law, Dalhousie University  
*Council of Parties for the Restorative Public Inquiry into the Home for Colored Children*  
Tony Smith, Co-chair  
*Chignecto-Central Regional School Board*  
Scott Milner, Director, Education Services  
*As an individual*  
The Honourable Pamela Williams, Chief Judge, Provincial and Family Courts of Nova Scotia  
*Tri-County Restorative Justice*  
Tanya Bain, Director  
*Mi'kmaq Legal Support Network*  
Paula Marshall, Program Manager  
*Halifax Regional Police*  
Jean-Michel Blais, Chief of Police  
James Butler, Inspector  
*As an individual*  
Michelle Williams, Director, IB&M Initiative, Schulich School of Law, Dalhousie University

## APPENDIX C – ORDER OF REFERENCE

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Extract from the Journals of the Senate of Thursday, January 28, 2016:

The Honourable Senator Runciman moved, seconded by the Honourable Senator Marshall:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report on matters pertaining to delays in Canada’s criminal justice system and to review the roles of the Government of Canada and Parliament in addressing such delays; and

That the committee submit its final report no later than March 31, 2017 and that the committee retain all powers necessary to publicize its findings until 180 days after the tabling of the final report.

After debate,

The question being put on the motion, it was adopted.

Charles Robert  
*Clerk of the Senate*

## APPENDIX D – MEMBERS

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The Honourable Bob Runciman, Chair  
The Honourable George Baker, P.C., Deputy Chair

The Honourable Senators:

Denise Batters  
Pierre-Hugues Boisvenu  
Jean-Guy Dagenais  
Mobina Jaffer  
Serge Joyal, P.C.  
Thomas Johnson McInnis  
Paul McIntyre  
Donald Plett  
Murray Sinclair  
Vernon White

*Ex Officio Members:*

The Honourable Senators Claude Carignan, P.C. (or Yonah Martin) and Peter Harder, P.C. (or Diane Bellemare).

*Other Senators who have participated from time to time in the study:*

The Honourable Senators Cowan, Fraser, MacDonald

*Parliamentary Information and Research Services,  
Library of Parliament:*

Julian Walker, Maxime Charron-Tousignant and Robin MacKay, Analysts.

*Clerk of the Committee:*

Jessica Richardson.

*Senate Committees Directorate:*

Diane McMartin, Administrative Assistant.

## ENDNOTES

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- i [R. v. Vassell](#), 2016 SCC 26; [R. v. Jordan](#), 2016 SCC 27; and [R. v. Williamson](#), 2016 SCC 28.
- ii [R. v. Jordan](#), para. 5
- iii Exceptional circumstances are defined as circumstances outside the Crown’s control in that (1) they are reasonably unforeseen or reasonably unavoidable, and (2) they cannot reasonably be remedied. They will fall into two categories: discrete events and particularly complex cases.
- iv [R. v. Jordan](#), para. 267.
- v *Ibid.*, paras. 282-285.
- 1 Senate, Standing Committee on Legal and Constitutional Affairs, [Studies and Bills](#). 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament. The evidence and testimony summarized in this interim report is also available at this site.
- 2 See the testimony of Yvan Clermont and Josée Savoie, Statistics Canada ([4 February 2016](#)); Statistics Canada, [Adult criminal court statistics in Canada, 2013/2014](#), Catalogue no. 85-002-X, 2015.
- 3 See the testimony of the former Chief Justice of the Superior Court of Quebec, François Rolland ([13 April 2016](#)).
- 4 See the testimony of Sue O’Sullivan, Federal Ombudsman for Victims of Crime, Heidi Illingworth, Canadian Resource Centre for Victims of Crime, Alain Fortier and Frank Tremblay, Victimes d’agressions sexuelles au masculin ([24 March 2016](#)); Tony Smith, Council of Parties for the Restorative Public Inquiry into the Home for Colored Children ([6 May 2016](#)); and Jean-Michel Blais, Halifax Regional Police ([6 May 2016](#)).
- 5 [Canadian Charter of Rights and Freedoms](#), Part I of the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (U.K.), 1982, c.11.
- 6 Determining what is a reasonable timeframe for proceedings is left to the courts to decide in the circumstances of individual cases. The importance the courts place on the speedy trial issue is reflected in such rulings as [R. v. Askov](#), [1990] 2 S.C.R. 1199, in which the Supreme Court of Canada set out some guidelines for determining when a delay before trial has been too long.
- 7 See the testimony of Sue O’Sullivan, Federal Ombudsman for Victims of Crime, Heidi Illingworth, Canadian Resource Centre for Victims of Crime, Alain Fortier and Frank Tremblay, Victimes d’agressions sexuelles au masculin ([24 March 2016](#)); Tony Smith, Council of Parties for the Restorative Public Inquiry into the Home for Colored Children ([6 May 2016](#)); and Jean-Michel Blais, Halifax Regional Police ([6 May 2016](#)).
- 8 See the testimony of Heidi Illingworth, Canadian Resource Centre for Victims of Crime ([24 March 2016](#)).
- 9 [Canadian Victims Bill of Rights](#), S.C. 2015, c. 13, s. 2.
- 10 Department of Justice Canada, Research and Statistics Division, Cheryl Marie Webster, [“Broken Bail” in Canada: How We Might Go About Fixing It](#), June 2015.
- 11 See the testimony of Professor Michelle Williams, Dalhousie University ([6 May 2016](#)).
- 12 See the testimony of Donald Piragoff, Department of Justice Canada ([4 February 2016](#)); Brian Saunders, Public Prosecution Service of Canada ([17 February 2016](#)); Joseph Oliver, Canadian Association of Chiefs of Police, Mark Benton, Legal Aid BC ([25 February 2016](#)); Judge Raymond Wyant, Senior Judge of the Manitoba Court, Former Chief Judge of the Provincial Court of Manitoba ([23 March 2016](#)); and Sue O’Sullivan, Federal Ombudsman for Victims of Crime, Heidi Illingworth, Canadian Resource Centre for Victims of Crime ([24 March 2016](#)).
- 13 See for example the testimony of Patrick J. LeSage, former Chief Justice of the Ontario Superior Court of Justice ([3 February 2016](#)); William Trudell, Canadian Council of Criminal Defence Lawyers ([18 February 2016](#)); Joseph Oliver, Canadian Association of Chiefs of Police ([25 February 2016](#)); Judge Raymond Wyant, Senior Judge of the Manitoba Court, Former Chief Judge of the Provincial Court of Manitoba ([23 March 2016](#)); and Professor Carl Baar, Brock University ([13 April 2016](#)), among others.
- 14 See for example the testimony of Professor Ian Greene, York University ([9 March 2016](#)); and Judge Raymond Wyant, Senior Judge of the Manitoba Court, Former Chief Judge of the Provincial Court of Manitoba ([23 March 2016](#)), among others.
- 15 See the testimony of the former Chief Justice of the Superior Court of Quebec, François Rolland ([13 April 2016](#)).
- 16 [Criminal Code](#), R.S.C., 1985, c. C-46.

17 *R. v. Bordo*, 2016 QCCS 477.

18 See the testimony of former Chief Justice of the Superior Court of Quebec, François Rolland ([13 April 2016](#)).

19 *Auclair c. R.*, 2011 QCCS 2661; *R. c. Auclair*, 2013 QCCA 671, and *R. v. Auclair*, 2014 SCC 6.

20 See the testimony of former Chief Justice of the Superior Court of Quebec, François Rolland ([13 April 2016](#)).

21 See for example the *Fair and Efficient Criminal Trials Act*, S.C. 2011, c. 16; Patrick Lesage and Michael Code, *Report of the Review of Large and Complex Criminal Case Procedures*, November 2008; Government of Canada, Department of Justice, *Final Report on Mega-trials of the Steering Committee on Justice Efficiencies and Access to the Criminal Justice System*, 2005.

22 See for example the testimony of Leo Russomanno, Criminal Lawyers' Association ([18 February 2016](#)); and Jean-Michel Blais, Halifax Regional Police ([6 May 2016](#)). See also: The Fraser Institute, *The Cost of Crime in Canada: 2014 Report*, 16 October 2014.

23 See the testimony of Jean-Michel Blais, Halifax Regional Police ([6 May 2016](#)).

24 See for example the testimony of George Dolhai and Brian Saunders, Public Prosecution Service of Canada ([17 February 2016](#)); Joseph Oliver, Canadian Association of Chiefs of Police ([25 February 2016](#)); Rick Woodburn, Canadian Association of Crown Counsel ([9 March 2016](#)); Tom Stamatakis, Canadian Police Association ([23 March 2016](#)); and Jean-Michel Blais, Halifax Regional Police ([6 May 2016](#)), among others.

25 Section 7 of the Charter states that everyone has the “right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” Furthermore, section 11(d) of the Charter states that any person charged with an offence has the right “to be presumed innocent until proven guilty according to law.” These rights have been interpreted by the Supreme Court as providing an accused person with the right to make “full answer and defence.” The Court has held that “full answer and defence” encompasses the right of the accused to have before him or her the full “case to meet” before answering the Crown’s case by adducing defence evidence. See for instance: *R. v. Rose*, [1998] 3 S.C.R. 262.

26 *R. v. Stinchcombe*, [1991] 3 S.C.R. 326.

27 For more information, see for example: The Court of Queen’s Bench of Alberta, *A Proposal for an Increase to the Judicial Complement of the Court of Queen’s Bench of Alberta*, January 2016; Sean Cavanagh, “[Manitoba's retiring top judge reflects on justice system](#)”, February 13, 2013; CBC News, “[VIDEO: Manitoba's justice system not perfect, says top judge](#)”, September 27, 2012; Jacques R. Fournier, chief judge of the Superior Court of Quebec, “[La Cour supérieure dans la grande région de Montréal: à l’aube des grands changements](#)”, 10 September 2015 [available in French only]; Caroline Touzin, « [Système de justice criminelle: les délais explosent](#) », *La Presse*, 30 January 2016; Caroline Touzin, « [Un système en péril](#) », *La Presse*, 30 January 2016 [available in French only].

28 See the testimony of former Chief Justice of the Superior Court of Quebec, François Rolland ([13 April 2016](#)).

29 *Judges Act*, R.S.C., 1985, c. J-1.

30 As of 1 July 2016, there were 41 vacancies in the number of judges able to be appointed pursuant to the *Judges Act*. Since that date, the federal government has announced the appointments of 15 judges. See: Department of Justice, *Judicial Appointments, 2015*; Office of the Commissioner for Federal Judicial Affairs Canada, *Number of federally appointed judges as of July 1, 2016*.

31 See the testimony of Tony Paisana and Ian Carter, Canadian Bar Association, Leo Russomanno, Criminal Lawyers' Association ([18 February 2016](#)); Kevin Fenwick, Ministry of Justice, Government of Saskatchewan ([24 February 2016](#)); Mark Benton, Legal Aid BC, David Field and Marcus Pratt, Legal Aid Ontario, Karen Hudson, Nova Scotia Legal Aid Commission ([25 February 2016](#)); Rick Woodburn, Canadian Association of Crown Counsel, Kate Matthews, Ontario Crown Attorneys' Association ([9 March 2016](#)); and Josh Paterson, British Columbia Civil Liberties Association ([23 March 2016](#)), among others.

32 See for example the testimony of William Trudell, Canadian Council of Criminal Defence Lawyers ([18 February 2016](#)); and Catherine Latimer, John Howard Society of Canada ([10 March 2016](#)).

33 Statistics Canada, *Definitions*, 2010.

34 Statistics Canada, *Adult criminal court statistics in Canada, 2013/2014*, Catalogue no. 85-002-X, 2015.

35 See for example the testimony of Patrick J. LeSage, former Chief Justice of the Ontario Superior Court of Justice ([3 February 2016](#)); Joseph Oliver, Canadian Association of Chiefs of Police ([25 February 2016](#));

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Catherine Latimer, John Howard Society of Canada, Kim Pate, Canadian Association of Elizabeth Fry Societies, and Elana Lamesse, Probation Officers Association of Ontario ([10 March 2016](#)).

36 See the testimony of Paula Marshall, Mi'kmaq Legal Support Network and Professor Michelle Williams, Dalhousie University ([6 May 2016](#)).

37 See the testimony of Patrick J. LeSage, former Chief Justice of the Ontario Superior Court of Justice ([3 February 2016](#)); and Rebecca Jesseman, Canadian Centre on Substance Abuse ([14 April 2016](#)).

38 See for instance the internal report prepared by Crime Prevention, Corrections and Criminal Justice Directorate, Public Safety Canada, *Vulnerable Populations Over-represented in the Criminal Justice System: People with Mental Health Issues and Aboriginal People*, 2015.

39 Ibid.

40 See the testimony of Doctor Alexander Simpson, Centre for Addiction and Mental Health ([20 April 2016](#)).

41 Kai Pernanen, Marie-Marthe Cousineau, Serge Brochu, Fu Sun, *Proportions of Crimes Associated with Alcohol and Other Drugs in Canada*, Canadian Centre on Substance Abuse, April 2002.

42 See the testimony of William Trudell and Greg DelBigio, Canadian Council of Criminal Defence Lawyers ([18 February 2016](#)); Joseph Oliver, Canadian Association of Chiefs of Police ([25 February 2016](#)); and Tom Stamatakis, Canadian Police Association ([23 March 2016](#)).

43 *Controlled Drugs and Substances Act*, S.C. 1996, c. 19.

44 See the testimony of Chief Judge Pamela Williams, Provincial and Family Courts of Nova Scotia ([6 May 2016](#)).

45 See the testimony of Patrick J. LeSage, former Chief Justice of the Ontario Superior Court of Justice ([3 February 2016](#)); William Trudell, Canadian Council of Criminal Defence Lawyers ([18 February 2016](#)); Joseph Oliver, Canadian Association of Chiefs of Police ([25 February 2016](#)); Judge Raymond Wyant, Senior Judge of the Manitoba Court, Former Chief Judge of the Provincial Court of Manitoba ([23 March 2016](#)); Rebecca Jesseman, Canadian Centre on Substance Abuse ([14 April 2016](#)); and Dale McFee, Ministry of Justice, Government of Saskatchewan ([21 April 2016](#)).

46 Ian Greene, "Ethics and Leadership in Times of Austerity: Ontario's Courts and 'Justice on Target'," *The Public Sector Innovation Journal*, 19(1), article 8, 2014.

47 Ibid.

48 See the testimony of Kevin Fenwick, Ministry of Justice, Government of Saskatchewan ([24 February 2016](#)).

49 See *Federal Courts Rules*, SOR/98-106 s. 50(1).

50 See the testimony of former Chief Justice of the Superior Court of Quebec, François Rolland ([13 April 2016](#)).

51 See the testimony of Brian Saunders, Public Prosecution Service of Canada ([17 February 2016](#)); and Dominic Lamb, Criminal Lawyers' Association ([18 February 2016](#)).

52 See the testimony of Michael Waby, Ministry of the Attorney General of Ontario ([24 February 2016](#)).

53 See the testimony of Patrick J. LeSage, former Chief Justice of the Ontario Superior Court of Justice; and, Professor Carissima Mathen, University of Ottawa ([3 February 2016](#)).

54 See for example the testimony of Kate Matthews, Ontario Crown Attorneys' Association ([9 March 2016](#)).

55 See the testimony of Ian Carter and Tony Paisana, Canadian Bar Association ([18 February 2016](#)), Joseph Oliver, Canadian Association of Chiefs of Police ([25 February 2016](#)), Anita Szigeti, Criminal Lawyers' Association ([20 April 2016](#)).

56 See the testimony of Ian Carter, Canadian Bar Association ([18 February 2016](#)); and former Chief Justice of the Superior Court of Quebec, François Rolland ([13 April 2016](#)).

57 See the testimony of Craig Fairbairn, Ottawa Police Service ([14 April 2016](#)).

58 See the testimony of Yvan Clermont, Statistics Canada ([4 February 2016](#)); Statistics Canada, *Adult criminal court statistics in Canada, 2013/2014*, Catalogue no. 85-002-X, 2015; Samuel Perrault, *Impaired driving in Canada, 2011*, Juristat, Catalogue no. 85-002-X, Canadian Centre for Justice Statistics, Statistics Canada, 10 January 2013.

59 See the testimony of Tom Stamatakis, Canadian Police Association ([23 March 2016](#)). Several Supreme Court of Canada decisions have affected many aspects of criminal proceedings for impaired driving cases, including how investigations are conducted, how the evidence is presented, and what defences are available, among others. For more information see: *R. v. St-Onge Lamoureux*, [2012] 3 S.C.R. 187; *R. v. Boucher*, [2005] 3 S.C.R.

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499; *R. v. St. Pierre*, [1995] 1 S.C.R. 791; *R. v. Whyte*, [1988] 2 S.C.R. 3; and *R. v. Appleby*, 1972, S.C.R. 303, 3 CCC. (2d) 354, 21, D.L.R. (3d) 325.

60 In 2013-14, the processing time for impaired driving offences took approximately 141 days. In 2010-2011, close to 1 in 4 (24%) impaired driving cases lasted more than one year. See the testimony of Yvan Clermont, Statistics Canada ([4 February 2016](#)); Statistics Canada, *Adult criminal court statistics in Canada, 2013/2014*, Catalogue no. 85-002-X, 2015; Statistics Canada; Samuel Perrault, *Impaired driving in Canada, 2011*, Juristat, Catalogue no. 85-002-X, Canadian Centre for Justice Statistics, Statistics Canada, 10 January 2013.

61 See the testimony of Professor Anthony Doob, University of Toronto ([13 April 2016](#)), indicating that impaired driving in Ontario took on average 5.3 appearances in 2012-13 and 5.9 in 2015.

62 See the testimony of Donald Piragoff, Department of Justice ([4 February 2016](#)); Greg DelBigio, Canadian Council of Criminal Defence Lawyers ([18 February 2016](#)); and Tom Stamatakis, Canadian Police Association ([23 March 2016](#)).

63 *Motor Vehicle Act*, [RSBC 1996] c 318.

64 See British Columbia, *Driving While Affected by Drugs or Alcohol*; and British Columbia, *The Various Alcohol and Drug Related Prohibitions and Suspensions*.

65 See the testimony of Greg DelBigio, Canadian Council of Criminal Defence Lawyers ([18 February 2016](#)); Joseph Oliver, Canadian Association of Chiefs of Police ([25 February 2016](#)); and Tom Stamatakis, Canadian Police Association ([23 March 2016](#)).

66 BC Justice Reform Initiative, D. Geoffrey Cowper QC, *A Criminal Justice System for the 21<sup>st</sup> Century*, 27 August 2012. See the testimony of Joseph Oliver, Canadian Association of Chiefs of Police ([25 February 2016](#)).

67 See the testimony of Ian Carter, Canadian Bar Association ([18 February 2016](#)).

68 See the testimony of Kevin Fenwick, Ministry of Justice, Government of Saskatchewan ([24 February 2016](#)).

69 See the testimony of Marcus Pratt, Legal Aid Ontario, Joseph Oliver, Canadian Association of Chiefs of Police ([25 February 2016](#)); and Tom Stamatakis, Canadian Police Association ([23 March 2016](#)).

70 See the testimony of Marcus Pratt, Legal Aid Ontario, Joseph Oliver, Canadian Association of Chiefs of Police ([25 February 2016](#)).

71 Government of Alberta, Justice and Solicitor General, *Electronic Disclosure*.

72 See the testimony of Kevin Fenwick, Ministry of Justice, Government of Saskatchewan, and Michael Waby, Ministry of the Attorney General of Ontario ([24 February 2016](#)).

73 See the testimony of Angela Connidis, Public Safety Canada ([21 April 2016](#)).