

Notes for an address by

**Brian Saunders, Q.C.
Director of Public Prosecutions**

Before the

Standing Senate Committee on Legal and Constitutional Affairs

Check against delivery

February 17, 2016

Thank you for the invitation. We always welcome the opportunity to discuss matters related to prosecutions, especially on a subject so key to how Canadians view their criminal justice system.

Joining me today is George Dolhai, Deputy Director of Public Prosecutions. Mr. Dolhai is in charge of the Drug, National Security and Northern Prosecutions Branch of the Public Prosecution Service of Canada.

The PPSC's mandate is set out in the *Director of Public Prosecutions Act*. It consists principally of initiating and conducting federal prosecutions and of advising law enforcement agencies or investigative bodies on matters related to prosecutions.

It is important to emphasize that the PPSC, as a prosecution service, is an operational entity. It is not primarily our function, or indeed our place, to provide advice on policy matters *per se*. However, our direct experience in the criminal justice system does put us in a position to provide government and legislators with advice on the challenges associated with prosecutions, and the likely practical impact of any proposed amendments to address those challenges.

As you know, responsibility for prosecutions is a shared one. In the provinces, most *Criminal Code* prosecutions are conducted by the local provincial prosecution service. However, the Code does give the PPSC jurisdiction to prosecute certain *Code* offences in the provinces, most notably terrorism, fraud, as well as criminal organization offences related to offences otherwise within the PPSC's jurisdiction.

In addition, throughout Canada, we prosecute all non-*Criminal Code* federal offences. Over 250 federal statutes contain offences that fall under the PPSC's jurisdiction and the PPSC regularly prosecutes offences under approximately 40 of those statutes. The largest volume of work in this area relates to offences under the *Controlled Drugs and Substances Act*. We also regularly prosecute federal offences under legislation aimed at protecting the environment, natural resources, the economy (for example, tax and competition laws), safety and health.

In the northern territories, the PPSC has a much broader jurisdiction. We prosecute all *Criminal Code* offences, in addition to those under all other federal legislation.

Because a criminal investigation can lead to both federal and provincially prosecuted charges against the same accused, the PPSC has arrangements in place with provincial prosecution services to ensure the most efficient use of prosecutorial resources. These arrangements, which are referred to as "major-minors", allow the prosecution service prosecuting an offence within its jurisdiction to also prosecute related less serious offences against the same accused that fall under the jurisdiction of the other prosecution service.

On occasion, federal and provincial prosecutors work together on a prosecution. Where this occurs, it is a response to the particular needs of the case. Some complex prosecutions require two or more Crowns to deal with the work involved, and the PPSC and the concerned provincial

prosecution service will sometimes agree to share their expertise where the charges involve both our mandates – such as drug offences combined with weapons offences – or where the charges are ones of concurrent jurisdiction – such as terrorism cases.

Prosecutors are always aware of - and concerned about – timeliness in prosecutions. Prosecutors must respect the constitutional right of an accused to be tried within a reasonable time. For this reason, we work with others in the criminal justice system to ensure that cases are dealt with in a timely manner. Prosecutors must also ensure that an accused is dealt with fairly.

Both of these goals are reflected in the PPSC's mission statement, which calls on the PPSC to prosecute cases with diligence, while being fair, impartial and objective.

The PPSC has taken a number of measures to support timeliness in its prosecutions. These measures include providing the police with guidance in preparing disclosure and the Crown brief, requiring prosecutors to prepare prosecution plans in all highly complex files, setting out how they propose to use resources and deal with potential issues, and using the tools available under the *Criminal Code* for defining issues and expediting cases.

These measures have ensured that we have very few cases where charges are stayed by the courts under section 11(b) of the *Canadian Charter of Rights and Freedoms* for unreasonable delay. Of the 88,936 charges that the PPSC prosecuted in 2014-2015 and that were concluded, only 149 were stayed by the courts. Some of these would have been stayed for delay.

Quite apart from cases where delay reaches the point of being unreasonable within the meaning of section 11(b), timeliness is a concern in the criminal justice system. In many instances, the public's reasonable expectations of timeliness are not being met. This Committee has already heard testimony describing the complexity of the problem and some of the initiatives, both federal and provincial, that have been taken, and are being taken, to address it. The prosecution community has been involved in these initiatives and in 2007, the Federal/Provincial/Territorial Heads of Prosecution Committee released a report on the Management of Mega Cases which contained recommendations that dealt with timeliness amongst other issues.

In considering delay, it is important to keep in mind that all cases have certain basic elements that require time. In *R. v. Morin*, 1992 1 SCR 771 the Supreme Court of Canada examined s. 11(b) and identified these elements as including the retention of counsel, bail hearings, the complexity of the case, disclosure, preliminary inquiries, the time required for defence counsel and Crown counsel to review the case and the fact that they both have other cases. The Supreme Court recognized that these elements, which it termed the "inherent time requirements" of a case, are influenced by local practices and conditions.

It is also important to keep in mind that delay times vary from province to province, and within a province, from judicial district to judicial district. They may also vary within a judicial district from

the provincial court to the superior court and within the courts depending on the type of case. This suggests that what is causing the delay similarly varies.

All criminal justice system participants must do their share so that the system is timely while respecting the rights and interests of all those affected by crime. At the PPSC, we expect our prosecutors to apply themselves diligently to complete the steps for which they are responsible and to be conscious that delays may affect public confidence in the administration of justice.

That concludes my opening remarks. Mr. Dolhai and I would be pleased to answer your questions.