

**SENATE OF CANADA: LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE  
PRESENTATION ON DELAYS IN THE CRIMINAL JUSTICE SYSTEM  
February 18, 2016**

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**1. The importance of the preliminary hearing:**

- a. an opportunity to weed out the cases that do not belong in our trial courts;
  - i. separating the wheat from the chaff.
  - ii. cross examination highlights weaknesses;
  - iii. opens the door to resolution - otherwise consume public resources at trial.
  
- b. defence lawyers take instructions from clients
  - i. opportunity for accused to see strength of crown case;
  - ii. come to terms with their crime and accept responsibility;
  
- c. Defence lawyers
  - i. do not often have preliminary hearings;
  - ii. seek out statistics;
  - iii. most often unnecessary for us, but there are times where its important and necessary (see above);
  - iv. seek out the numbers of cases where RPC has been used by prosecutors to withdraw serious cases – compare this to discharges at prelim;
  
- d. the preliminary hearing is cost and effective and reduces delay.

**2. Remand and time spent in pretrial custody**

- a. system most efficient when the professionals do their job in the most efficient way possible.
  - i. Approx. 50% of prisoners on remand;
  - ii. Denial of bail fundamentally hampers our ability to deliver justice, whether defence delivering justice to individuals, or judges and prosecutors delivering justice the community at large.
  - iii. risk-averse culture of bail - inescapable conclusion that the bail reform act has failed.

1. disproportionately represents the poor, the dispossessed, the disenfranchised, the mentally ill, and those who are new to our country and culture.
- b. Wholesale denial of bail undermines efficiency in dealing with criminal matters.
  - i. Meeting with clients is difficult, and subject to a variety of interferences
  - ii. Reviewing disclosure difficult for clients locked up most of the day, and who have to schedule times to see their own disclosure;
  - iii. Cases that demand rehabilitative efforts are hobbled by the lack of any programming available in our provincial remand centres
- c. Malingerers in the system causing delay;
  - i. few and far between;
  - ii. tend to be self-represented;
  - iii. sometimes afflicted by serious mental illness;

### **3. Restorative justice**

- a. seeks to focus on the victim of crime as much as possible, and to ensure that those responsible for crimes take full responsibility for their actions.
- b. can and should be used as an integral part of a system that is susceptible to delays caused by volume. Such programs can help with minimal financial outlay by the state;
- c. Not diversion;
- d. Not abandoning the victims of crime;

### **4. Costs**

- a. We have eliminated costs from the criminal justice system;
- b. Financial consequences have a significant impact on behavior – look at what we can do with the income tax act;
- c. Look to the UK for a costs regime that still exists in the criminal justice system, requiring payment of reasonable costs to those found not guilty and allowing the Crown to seek costs against those convicted of crimes;