

**Saskatchewan Ministry of Justice Presentation**  
**Standing Senate Committee on Legal and Constitutional Affairs**  
**Wednesday, February 24, 2016**  
**Delays in Criminal Proceedings Study**

**INTRODUCTION**

Delays in criminal courts are costly and lead to sub-optimal outcomes for the justice system. This not only includes the courts, but applies to victims and families of the accused. Public confidence in the justice system is reduced if high quality services are not provided in a timely and cost-effective manner.

A collaborative approach can address the full range of factors affecting criminal justice delays in Saskatchewan and elsewhere in Canada. The challenge is achieving efficiencies without compromising the basic principles of justice.

While formally independent, the parts of the criminal justice system are also involved in processes that are inter-dependent. Criminal justice delays are complex, both the result of factors common to the entire criminal justice system, as well as factors specific to each part of the criminal justice system.

Delays may undermine the prosecution's ability to obtain convictions, because the likelihood a witness will appear to testify, or will remember the events clearly or accurately if they do testify, decreases dramatically over time. Lengthy delays can also have real, negative impacts on victims of crime and families.

Criminal charges may be stayed by the court where the trial delay exceeds the limits set by the Supreme Court of Canada in interpreting the Charter right to a fair trial. Public confidence in the administration of justice is undermined by such stays.

That does not mean that all delays are unnecessary. For example, therapeutic courts take longer because the treatment is offered under court supervision before the matter is completed. There is a balance that needs to be respected to ensure fair outcomes.

**WHERE WE ARE**

Saskatchewan provincial courts are efficient at processing criminal court cases. In 2013-14, the median time elapsed was 71 days from first appearance to final decision, which is far below the national average of 123 days and second only to Prince Edward Island. Saskatchewan also had 45 per cent of adult criminal court cases in provincial court end within 60 days, compared to 35 percent nationally. While Saskatchewan does not have provincial information for Queen's Bench courts on the lengths from first appearance to final decision, due to the complexity of

these cases, they generally take longer. Fewer than 10 per cent of cases are heard by Queen's Bench in Saskatchewan.

An increase in the time to trial could be a result of several factors that include: increased levels and complexity of crime, increased demands for disclosure, difficult counsel or accused persons, inclement weather, over-burdened dockets resulting in little time to deal with cases, and increases in the population of communities. These factors can overload the system at various points, with multiple appearances resulting in an increase in the length of time required for a case to move through the system.

## **WHAT CAN WE DO**

Decreasing the number of processes needed to arrive at outcomes can reduce delays. This includes coordinating witnesses ahead of time or using electronic disclosure to eliminate unnecessary adjournments. This will also include creating incentives within the system to ensure that delays or adjournments are no longer accepted as the "norm". This cultural shift provides an opportunity to seek efficiencies without diminishing quality of outcomes.

If not properly coordinated, the sharing of information between counsels can lead to delays prior to trial. Crown disclosure requires managing vast quantities of information within the justice system in various formats (i.e. paper documents, sound and video recordings, digital information). Proper and timely Crown disclosure shortly after charges are laid allows the accused or their counsel to make informed decisions. Difficulties in ensuring proper Crown disclosure may cause avoidable adjournments or inefficient allocation of witness resources.

As advances are made in technology, one possible method to reduce delays is to promote and expand the use of electronic disclosure within the criminal justice system and increase the acceptability of this form of disclosure, where appropriate. The materials are portable and easier to store, search and organize. However, these forms of disclosure may not be appropriate in all cases, such as an accused who is unrepresented. Usability and availability of technology are issues for those disseminating and receiving disclosure.

## **Legal Aid**

Legal Aid plays a crucial role in maintaining and promoting public confidence and trust in the justice system. Criminal legal aid helps to ensure that the criminal justice system functions both effectively and efficiently for all participants, including the accused, victims or witnesses, prosecutors and the court itself. For example, legal aid lawyers are assigned to the Duty Counsel program which offers accused persons in custody legal assistance with bail hearings or guilty pleas at the earliest possible time, regardless of their financial eligibility.

Legal Aid is also essential to the fairness of the justice system. Studies show that economically disadvantaged persons who are accused of criminal offenses are among the more marginalized and vulnerable members of the population, and often suffer from other social issues, such as low literacy and education rates, mental health issues or addictions.

Legal Aid contributions from the federal government to Saskatchewan have been frozen at \$4.2 million since 2007-08. Over that same time period, provincial contributions rose from \$14.4 million to \$18.6 million. This has led to a significant reduction in the number of lawyers providing legal aid services. In 2007-08, 241 lawyers were providing legal aid, compared to 179 lawyers in 2013-14.

With more people choosing to self-represent or unable to access Legal Aid, there is an increasing need for services such as duty counsel that helps these individuals be aware of the rules and procedures to avoid unnecessary delays and expenses. Lack of representation can result in a significant disadvantage or loss in a person's ability to pursue a claim, appeal or defense. To assist those who choose to self-represent, the Courts of Saskatchewan provides information about the rules of court on its website.

### **Remand Practices**

The processes involved in remand court operations are numerous and complex. Looking for ways to decrease the time to decisions on remand/release can be important to improving the overall effectiveness and efficiency of the justice system. Ontario and Saskatchewan have agreed to collaborate with justice partners in examining remand practices with the intent of reducing needless or unnecessary time in remand while maintaining the principles of community safety and due process.

The Saskatoon remand court is currently examining options to reduce the number of individuals held on short-term remand. In addition improvements such as remote video courts, improved communication between the crown, legal representatives, the courts and police have led to reduced delays and improved the efficiency of the courts.

Saskatchewan is currently working with the Canadian Centre for Justice Statistics on a special study on re-contact within the justice system. By being able to link individuals throughout the entire justice sector (policing, courts and corrections), the re-contact initiative will improve target programming that could decrease future demand on the justice system. It will also allow for examination of delays in the justice system by providing a better understanding of the different types of trajectories of individuals that move through the system.

## **Greater Access to Justice**

The Ministry of Justice is working with the Law Society of Saskatchewan to explore possibilities for allowing non-lawyers to provide some legal services in Saskatchewan, with the overall goal of providing greater access to citizens. Some of the options being considered are:

- Expanding the scope of paralegals working under the supervision of lawyers;
- Relaxing the restrictions on other types of professionals who provide services akin to legal services; and
- Creating a new class of legal service providers who would be permitted to offer some legal services independently after undergoing training and assessment.

## **Aboriginal Courtworker Program**

The Saskatchewan Aboriginal Courtworker Program provides important services that assist Aboriginal adults and youth in conflict with the law. Courtworkers help ensure that Aboriginal people who are alleged to have committed a criminal offence receive fair and just treatment before the courts. Courtworkers explain the reason for the charges to the accused, provide general information about legal rights and responsibilities, help the accused get legal counsel, act as a liaison between the accused and the police, defence lawyers, the court or the Crown prosecutor, ensure the accused understands all court proceedings, translate court proceedings for the accused if he or she is not fluent in English and appears with the accused in court. This program operates in 83 per cent of court points in Saskatchewan, and a 2011 Justice Canada survey found that 92 per cent of clients were satisfied or very satisfied with the services they received from an Aboriginal Courtworker in Saskatchewan. Without this program, there would be more costly court processes and further delays in the system.

Despite these successes, the absence of any federal funding increases creates questions about the continued viability of this program. Over the past decade, as provincial funding increased and federal funding remained frozen, the funding commitment for this program has dropped from a 50/50 to a 33/67 federal/provincial cost share. On the total program budget of over \$1.9 million annually, the federal government contributes \$620,000. The salary range for Saskatchewan courtworkers is approximately \$28,000 to \$34,000 per year, which is the lowest among courtworkers in Canada, causing significant challenges in the recruitment and retention of skilled and experienced staff. At the same time, further demands are being placed on Aboriginal Courtworkers to support women and children involved in child protection proceedings. The criminal and family justice systems are often linked in these proceedings.

## **Therapeutic Courts**

Part of reducing overall delays in the court system is redirecting accused from traditional court settings where alternative means are available. Saskatchewan and other jurisdictions have successfully employed therapeutic or solution focused courts to more effectively address addictions, mental health, and domestic violence matters as an adjunct to the traditional court system. Therapeutic or problem solving courts differ from the traditional adversarial court process through their use of a collaborative problem-solving approach to resolve matters brought to court. Therapeutic approaches across the criminal justice system is helping to improve justice response to criminal behavior, further reduce re-contact, improve the life situation for offenders, victims and families, and support Saskatchewan in achieving its priorities of safe communities and growth.

## **Alternative Programs to Court**

Another method of redirection away from courts is through adult alternative measures and youth extrajudicial sanctions programs. These are currently delivered across Saskatchewan by a variety of community-based organizations, tribal and band councils and other service providers. The majority of referrals are for non-violent property crimes.

## **HOW CAN THE FEDERAL GOVERNMENT HELP**

Collaboration between the federal government and the provinces and territories in areas of shared jurisdiction and responsibilities for the administration of justice is crucial to coordinated reform and identifying innovative solutions to address issues such as delay. Current examples of this collaboration include the FPT DM Committee on Efficiencies and FPT ADM Committee on Access to Justice. In addition, FPT forums such as the Coordinating Committee of Senior Officials (CCSO) Criminal Justice, the CCSO Youth Justice, and the Permanent Working Group on Legal Aid are all major contributors to coordinated reform. Many suggested reforms to youth and criminal justice have been raised in these forums, including issues such as regulating disclosure, increasing use of video-conferencing, and preliminary inquiry reforms. By continuing to engage in discussions with the provinces and territories on issues that are common to all jurisdictions, the federal government will ensure that any legislative changes or other reforms will be the best option for all jurisdictions.

Judicial Resourcing and Judicial Compensation matters were discussed at the FPT Deputy Ministers Responsible for Justice and Public Safety in June 2015. It has been proposed that a new FPT Working Group chaired by Justice Canada be established to share information and experience in relation to judicial resourcing and compensation. Saskatchewan has indicated support for this process and will participate in the larger FPT discussion of these matters. This will be an effective forum for determining future directions related to judicial resourcing.

The federal government can assist Saskatchewan in reducing delays within the criminal court system by implementing the following policies:

- Enhancing financial support for Legal Aid;
- Enhancing financial support for the Saskatchewan Aboriginal Courtworker Program;
- Providing further support for therapeutic courts;
- Enhancing support for community justice programs to provide alternatives to court; and
- Supporting practical and operational amendments to the Criminal Code and Youth Criminal Justice Act which support operational reform.

The current Legal Aid funding agreement with the federal government expires in March 2017, which provides the federal government, provinces and territories with the opportunity to engage in discussions regarding potentially enhancing the funding currently provided.

## **CONCLUSION**

Saskatchewan believes in taking a leading role in improving the justice system and is willing to serve as a demonstration site for new or existing initiatives that may lead to reducing delays in the court system. This may include receiving additional targeted legal funding to enhance the Saskatoon remand court or other innovative project with the goal of reducing delays.

Collaborative processes can lead to small changes with long-term benefits for victims, families and citizens.