Notes for JM Blais

Senate Committee on Legal and Constitutional Affairs

Maximum: 5 minutes

-Thank you very much. I am pleased to address you as a police chief and as a police officer who has had the opportunity to work in four Canadian provinces—Quebec, Manitoba, Ontario and Nova Scotia. During my career as an investigator, I prepared several dozen judicial authorizations and was involved in the disclosure of evidence for a megatrial in Quebec. I also served as an adjudicator and disciplinary prosecutor for the RCMP Adjudication Board.

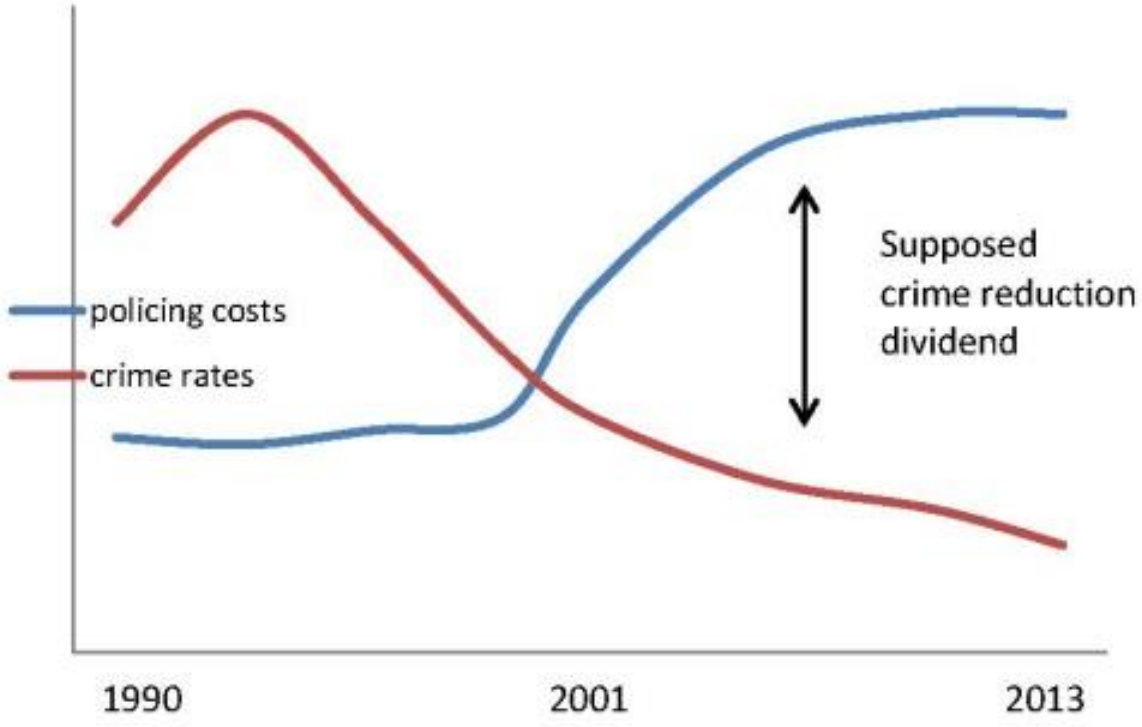
-I would like to start by noting that I am not familiar with any procedural regime other than the one governed by the *Canadian Charter of Rights and Freedoms*. In fact, I can tell you that, today, only 7 of the Halifax Regional Police's 530 officers were working when the Charter was created in 1982.

-I have no intention of advocating for the partial or total elimination of Charter provisions that have a major impact on Canadian criminal law. Like all my police colleagues today, I accept the Charter's supremacy. However, I do want to highlight three important issues that pertain to delays in criminal trials and even to all criminal procedures that are subject to the Charter.

-These three issues are a recognition that policing and the accompanying judicial process have become and will continue to become increasingly complex. This is for many reasons, most notably because of the globalisation of crime, the proliferation of cybercrime and the continued use of social media platforms to effect crime. This increasing complexity requires police agencies to enhance their footprint and conduct investigations across geographic boundaries.

- As we know, since 1992, crime rates have decreased. With the decrease in crime, we should have expected a 'crime-reduction dividend', very much like the supposed 'peace dividend' that resulted from the fall of the Soviet Union. Instead, we have seen the overall costs of policing increase substantially. One of the main drivers of this has been the accountability measures at play: proper governance

structures to our financial overseers (in HRP's case, Regional Council and the Board of Police Commissioners); operational accountabilities to the Nova Scotia Police Review Board and the Serious Incident Response Team; deontological accountabilities through legislated professional standards; and, of course, legal and constitutional responsibilities to the Courts.



-We also know that as a result of the evolution of criminal law, both Canadian and American, the accused's actions are no longer on trial, but the police investigation is. This is a direct result of the confrontational system we have.

-My testimony will focus on three key areas where we feel that delays could be mitigated:

- Procedural changes
- Victimization
- Diversion

1) **Procedural changes:** in this area, we can place the challenges of international legal requirements, disclosure and the limited usefulness of the preliminary inquiry in today's trial structure.

As previously indicated, the advent and widespread usage of social media has resulted in some advantages for law enforcement in terms of obtaining specific elements of both *mens rea* and *actus reus* of various crimes. But when the information is stored on a server in another country, we are subject to the Mutual Legal Assistance Treaty (MLAT) process in order to access that information. In several high-profile local matters, that has resulted in significant delays in both the investigation and the judicial process.

In my time as a police officer, the most significant *Charter* decision was that of *Stinchcombe*. No other decision, not *Hunter vs. Southam*, not *Askov*, not *Collins*, not *Feeney*, not even *McNeil* can come close to Stinchcombe in terms of the added burdens placed not only on police and the Crown, but the entire judicial apparatus; that also includes the courts and defence. As stated previously, I am not asking for an abrogation of the *Charter*, but perhaps for an enhancement such as in the case of positive disclosure on the defence to level the playing field and to avoid unnecessary delays as is currently done in the United Kingdom.

When I worked in Québec, even in cases that were complex, the preliminary inquiry was very preliminary. It was intended to determine if there existed sufficient evidence to cite an accused for their trial. I was shocked when I started working in Manitoba and then Nova Scotia where the preliminary inquiry had morphed into the trial before the trial. In the Supreme Court of Canada matter *R v. Hynes* [2001] 3 S.C.R. 623, it was described as being an ''expeditious charge-screening mechanism''. The question I have for you today is whether or not this mechanism is still expeditious and if it is still pertinent considering today's requirement of complete disclosure for the Crown?

2) **Victimization:** Our system is offender centric. And for good reason, as we wish to avoid wrongful convictions and wrongful acquittals which can, in both cases, result in re-victimization for many parties. However, we must recognize that our process is not kind to victims.

Secondary victimization is poor treatment following the crime or tragedy. Inadequate responses to the victimization and the needs of the victims add to the distress that victims and their families are suffering. There are two categories of secondary victimization – injustice and indignity.

- Injustice includes:
  - Fear of reprisal
  - Lack of information about the judicial process
  - Perceived lack of interest by the police, courts and/or correctional system
  - Delays in the court process
  - Lack of contact and response from appropriate players in the criminal justice system
  - Loss of income or job resulting from court attendance and preparation
- Indignity includes:
  - Inability to pay funeral expenses for departed loved ones
  - Physical sexual assault examination
  - Police investigation and questioning
  - Societal inferences of blame on the victim

Furthermore, there is an institutional lack of support for victims: from victim service workers to testimonial aids, CCTVs, screens and accommodating court scheduling.

3) **Diversion:** We all know the benefits to diverting cases from the courts. This could be achieved by providing different options for summary and some dual offences versus indictable offences; some dual offences would go to court and others wouldn't. This would require a stringent vetting process and result in criminal court being reserved for the most serious offences and greatest public safety concerns. As police, we know that prison tends to simply create better criminals instead of rehabilitating individuals. The American approach to

incarceration with various ‘three-strike rules’ is ample evidence of this approach not working.

So I think I have described the key issues that I wanted to cover with you today. I would be happy to take your questions.