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The Causes of BC's Criminal Justice System Crisis

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Author: Kevin Tilley

Editor: David Eby

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The Law Foundation of British Columbia
1340 – 605 Robson Street
Vancouver, B.C., V6B 5J3
www.lawfoundationbc.org

BCGEU
4911 Canada Way,
Burnaby, B.C. V5G 3W3
www.bcgeu.ca

To order copies of this report, please contact:
B.C. Civil Liberties Association
550-1188 West Georgia Street
Vancouver, BC, V6E 4A2
Tel: 604.630.9757
e-mail: info@bccla.org
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The criminal justice system in B.C. is in crisis.

The court system has slowed to a crawl, as shortages of staff and judges have caused courtroom closures and an unmanageable backlog of criminal cases. The waiting time for trial has reached a level where hundreds of cases are at risk of being dismissed for delay. Meanwhile, our prisons are dangerously overcrowded, leading to rehabilitative efforts failing and increasing injuries among staff. These problems are not a surprise. Since 2001, the budget for court services including administrative staff and security has been cut 42%. The budget for corrections has been cut 29% in that same time period and the funding for legal aid has been cut 36%. Despite a significant overall decrease in crime in our society, in 2008 B.C.'s justice system had 14.8% more cases than it did in 2001, and our jails housed 16% more prisoners.

WHAT'S WORKING**Crown charge review saves reputations, and creates efficiencies that other provinces are not experiencing**

In some cases, B.C. has done a good job of targeting spending in places that result in significant net savings. For example, in B.C., as in New Brunswick and Quebec, Crown prosecutors screen cases before charges are laid in court whereas the rest of Canada sees charges laid by the actions of the police alone. Vetting by Crown removes frivolous or weak cases at the front end rather than wasting court resources only to have those cases collapse at a later stage. In Quebec, New Brunswick and B.C., where Crown screening of charges is policy, only 17% of cases are stayed or withdrawn as compared to 36% for the remaining provinces. Additionally,

those three provinces succeed in securing a finding of guilt in 73% of cases as compared to 62% for the rest of Canada. Policies like these that target spending on services that make the system work more efficiently, and protect rights, should be encouraged in other parts of the system. If one assumes that without pre-charge screening B.C. would match statistics in provinces that do not use Crown screening, B.C. would have approximately 7,000 additional cases in the criminal justice system per year, adding tens of millions of dollars to the overall cost of operating the system.

Our justice system is working harder, and doing more, with significantly less

While recent provincial government press releases have decried a crime rate reduction and apparent increases in costs, our court system is handling more cases with fewer resources than ever before. During the period 2001 to 2009, highlighted by dramatic provincial spending cuts of between 30% and 45% to various departments and services in the criminal justice system, the number of cases has not declined. In 2001 B.C.'s criminal justice system handled 40,510 cases. In 2008/2009, the most recent year for which data are available from Statistics Canada, B.C.'s justice system handled 46,472 cases, an increase of 14.8%. In the period between March 31, 2008 and January 21, 2012, the number of full-time equivalent provincial court judges dropped from 141.9 to 121.35. Even after nine new judges were recently appointed, there is still an 8.1% decrease from 2008, and the system is 9% short of what the Court has told the province it needs to keep pace with the new cases arriving each day.

WHAT'S NOT WORKING

People with mental health issues are using too many police, court and jail resources, instead of more efficient and humane healthcare resources

Too many people with mental illness are being brought before the courts at significant cost. The Vancouver police estimate that 31% of their calls involve persons in poor mental health. Approximately 29% of inmates in provincial jails are mentally disordered. Currently mental health treatment is not available at the levels required, meaning that too many people in need of health care end up in an already over-burdened court system.

More people are in jails waiting for trials than are in jail serving a sentence

Provincial jails are overcrowded due to funding cutbacks and an increase in the number of people being held in remand. Remand facilities house people deemed inappropriate for bail while they wait for trial. There are now more people in provincial jails awaiting trial than there are serving a prison sentence. Fifty-nine percent of all adult and 55% of all youth inmates in B.C. prisons are waiting for a trial. The cost of housing adult remand inmates alone is likely in the range of \$30 million per year. Much of that money would be better spent on improving bail supervision programs to offer alternatives to custody for those awaiting trial, or improving courthouse resources to speed up trials and reduce pre-trial custody.

Self represented defendants clogging up the court system

Funding for legal aid is now 36% less than it was in 2001, resulting in a significant number of people before the courts without a lawyer. Unrepresented accused cause excessive delays and draw resources from court administrators, judges, Crowns and others who find themselves

giving assistance in navigating complicated legal processes. In 1999/2000, 27,479 people received legal aid for criminal charges. By 2010/2011, that number had dropped 26% to 20,224, with well over 7,000 more criminally charged individuals appearing before courts without lawyers.

Delays before trial are up 28% in just six years

The delays in setting trial days have reached crisis levels. The average time between charge and trial has gone up 28% since 2005 and the backlog has become unmanageable. Forty percent of cases have been in the system for over 10 months and are at significant risk of being dismissed for undue delay.

B.C.'s prisons have ratios of up to 60 inmates for one staff member, putting both groups at significant risk

B.C.'s prisons are massively overcrowded with some institutions operating at twice their intended capacity. The ratio of inmates to officers has increased from 20:1 in 2001 up to 60:1 in some institutions, putting the health and safety of corrections officers at risk. Studies show that over 87% of corrections officers have been hit by blood, 77% had been threatened by inmates and 36% had been assaulted on the job. 17% of officers had witnessed a homicide or suicide of an inmate within the past year.

Overcrowding presents major concerns for prisoner safety. From 2004-2011, 51% of deaths in provincial facilities were due to unnatural circumstances including homicide, suicide, and accidental overdose. More has to be done to ensure that jail sentences do not unintentionally become death sentences. Prison overcrowding also presents difficulties in delivering rehabilitative programming for inmates. Studies suggest that going to jail increases the risk of homelessness by 40%, raising concerns about the broader social

costs of a prison system that is unable to provide support and programming on release.

Only 35% of community programming for offenders is fulfilled due to high caseloads for probation officers

Cutbacks to corrections have led to a rise in the workload faced by probation officers. B.C.'s probation officers now have the second-highest caseload in Canada. That caseload has meant less time to deliver programming such as violence intervention and substance abuse courses. Presently, only 35% of such programming is ever completed, raising concerns about the effectiveness of B.C.'s rehabilitation system and the likelihood of re-offending.

WHAT WE SHOULD DO

B.C.'s justice review must emphasize fairness, justice, due process, and public safety, and affirm the justice system as an essential service that requires fully funded resources to fulfill its role

The BCCLA welcomes the announcement of a government-led review into the justice system but cautions that such a review should aim to protect fundamental freedoms and recognize the importance of the justice system in our democracy. Invariably, adequate resources

are required to achieve this. However, the invocation of a business administration model to reforming the justice system is inappropriate. An efficiency in business may save money and increase profit. But just as Supreme Court of Canada Justice Laforest noted in the context of fiduciary obligations generally, "the law has recognized the importance of instilling in our social institutions and enterprises some recognition that not all relationships are characterized by a dynamic of mutual autonomy, and that the marketplace cannot always set the rules." A single-minded focus on efficiency in the justice system will lead to the violation of rights, put the public at risk, and jeopardize the constitutional right to a fair trial. The justice system is something that is administered by government as a public trust. Business systems and justice systems are simply not the same.

Nonetheless, the justice system in B.C. is presently in a government-induced crisis and the need for reform is pressing. The current problems will not be fixed through simple improvements in efficiency, the integration of management, or by tampering with judicial independence. Instead, what is needed is a real commitment to justice through adequate funding as well as strategic reforms that prevent crime and recidivism.

INTRODUCTION

The Canadian criminal justice system is a complex machine, requiring the participation and cooperation of a vast array of actors including the provincial government, the judiciary, the legal bar and the staff who administer its operations. In B.C., that machine is showing signs of malfunction. Recent reports have highlighted problems of delay in completing criminal cases. High profile criminal cases have been dismissed for undue delay, courtrooms regularly face unmanageable backlogs and staff shortages are impeding the smooth functioning of the system. The Chief Justice of the Supreme Court of B.C. has declared in a recent speech before the Canadian Bar Association that the justice system in B.C. “is threatened, if not in peril”.¹

The threat posed by a breakdown of the justice system cannot be overstated. The administration of criminal justice not only delivers a service to the people of the province but also constitutes a fundamental tenet of our democratic order. The people of B.C. expect a justice system that can deliver justice in a manner that is fair, accountable, and timely. As confidence in the administration of criminal justice is eroded, the viability of the rule of law and the proper functioning of our social order is put at risk.

A poorly functioning justice system allows crimes to go unpunished, alienating victims and their families, compromising the confidence of the public and heightening the risk of vigilantism. Accused individuals who find themselves

involved in a dysfunctional system are at increased risk of miscarriages of justice and the arbitrary loss of liberty. Inadequate resources for correctional centres leads to inhumane conditions, dangers to staff and prisoners alike, and failed rehabilitative services, increasing the risk of recidivism. Our society and the well-being and liberty of all citizens requires that our criminal justice system be effective and just.

The purpose of this report

In B.C., many commentators have proclaimed that our courts have reached a point where a breakdown of this fundamental societal institution is imminent.

A large portion of the blame for the current state of affairs is laid at the feet of the provincial government for failing to provide adequate funding in the places where it is needed most. This paper examines whether such blame is appropriately assigned to the provincial government, or whether, as the provincial government suggests, our justice system has failed to find necessary efficiencies given declining crime rates and concomitant reduced burdens on the justice system.

In preparing this report, we conducted interviews with key individuals involved in the administration of justice in B.C. including probation officers, court clerks, corrections officers and sheriffs. We also conducted secondary research, collecting and analyzing reports prepared by various groups: Stats Canada, the

1 “Challenges To The Budget For The Court Services Branch”, Remarks of Chief Justice Bauman, at the Canadian Bar Association B.C. Branch Meeting, 19 November 2011, Las Vegas, Nevada.

judiciary, lawyers, provincial and federal governments and non-governmental organizations.

We have presented our findings in a report form that examines the stages of the criminal justice system chronologically as they would be experienced by an individual charged with

a criminal offence, beginning with the decision by the police to arrest and recommend a charge, Crown Counsel review of that charge, remand facilities where people await their trials, and the trial process. Finally, the report considers the state of correctional resources including both community correctional efforts and prisons.

Our findings are not reassuring. Throughout, the research points out that the vast majority of the challenges faced by the system today are the direct result of policy decisions and funding shortfalls made over the past decade. In 2002, the provincial government began a program of across-the-board cutbacks to government services in B.C. Chief among targeted departments and systems was the justice system. That year, the government closed 24 courthouses across the province, reallocating the caseload from those locations to other judicial centres or re-designating certain locations as circuit courts where justice would be delivered periodically by visiting judges and staff.²

In tandem with cuts to the administration of justice, the provincial government also instituted cuts to correctional centres. Beginning in 2002, ten correctional centres in the province were closed, leading to the increasing centralization of inmate populations and the downsizing of staffing levels at correctional centres.³

Also in 2002, the government put in place cutbacks to funding for legal aid and associated community legal support programs. In 1999/2000, 27,479 people received legal aid

for criminal charges. By 2010/2011, that number had dropped 26% to 20,224, with well over 7,000 more criminally charged individuals appearing before courts without a lawyer.⁴ From 2001 to 2012, the budget for corrections has been cut by a total of 29%. The budget for court services, including both administrative staff as well as security, has been reduced by 42%. The budget for justice services, which includes the grant for legal aid, has been reduced by 26%.⁵ The graphs on the following pages illustrate the changes in budgets since 2001.

Recently, the Ministry of Finance issued a report dated February 8, 2012 accompanied by a Green Paper directed at eventual policy reforms.⁶ Those documents point at rising costs with concern and suggest improvements that could be made towards increased efficiency. While efficiency is a laudable goal, the justice system is already handling 14.8% more cases with 30-40% fewer resources, and is on the verge of collapse. As the past decade of budget cuts have vividly demonstrated, cost-cutting measures can have radical and far-reaching effects on the system for many years to come, including on mental health, homelessness, justice and public safety.

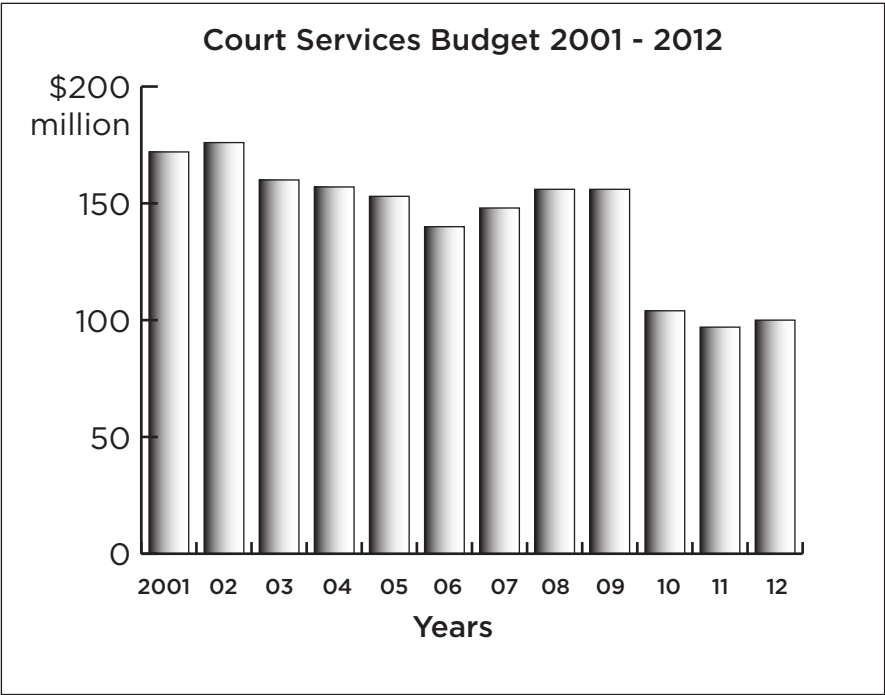
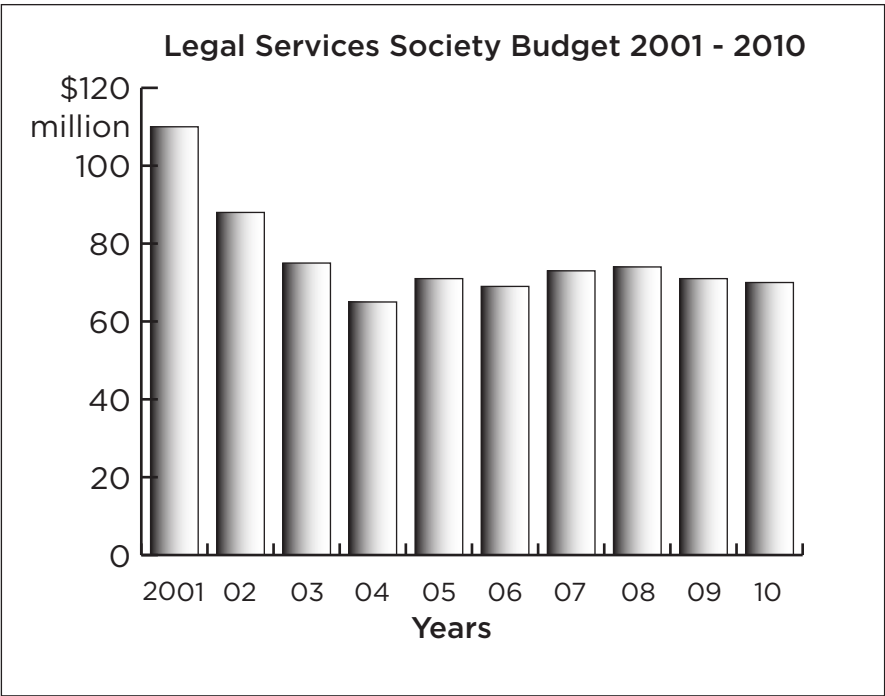
2 Provincial Court of B.C., *Annual Reports*, available online: www.provincialcourt.bc.ca (viewed February 2012).

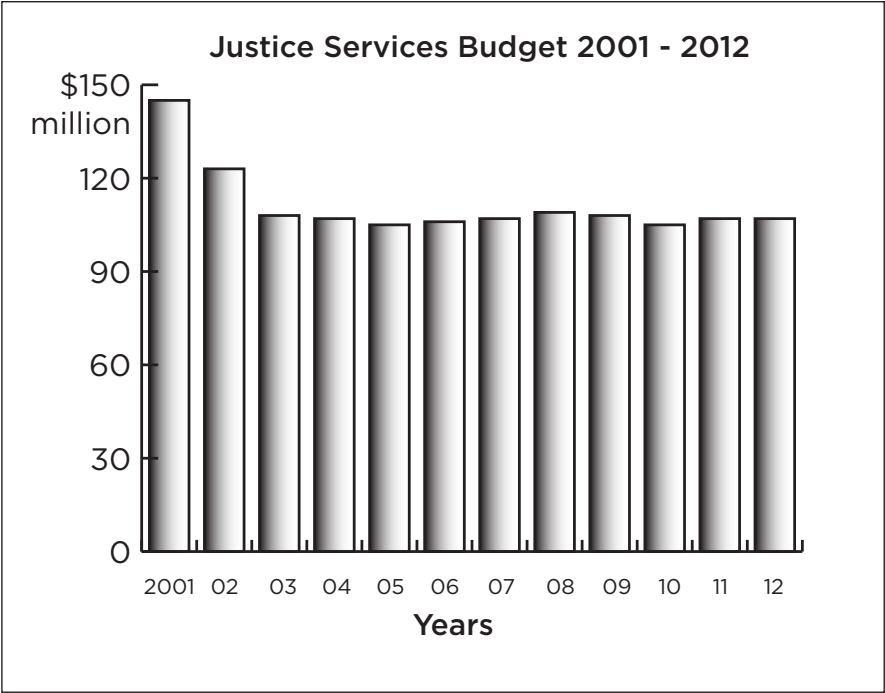
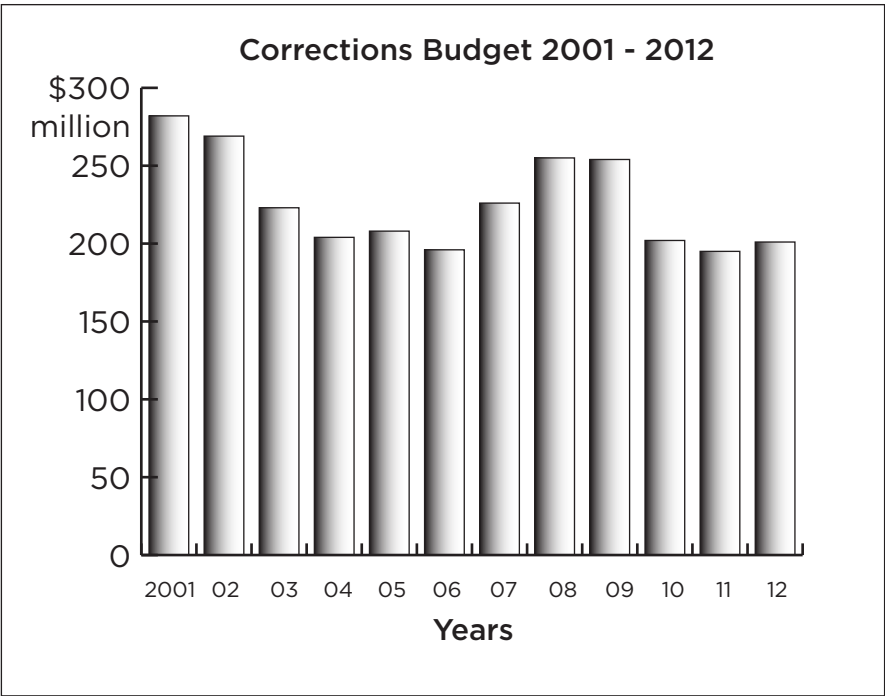
3 Patricia Fisher, "BC Corrections - Adult Custody Division: Highlights of 2007 Organizational Health Assessment Report & Recommendations", Ministry of Public Safety and Solicitor General (2008).

4 Annual Report 2000/2001 and Annual Report 2010/11, Legal Services Society of B.C. (2001), www.lss.bc.ca/about/annualReports.php (viewed February 2012).

5 All figures based on budget documents between the fiscal years 2001/2002 to 2011/2012, www.bcbudget.gov.bc.ca (viewed February 2012). All figures have been adjusted for inflation to 2012 dollars.

6 "Review of the Provincial Justice System in B.C." (2012). Available at: www.ag.gov.bc.ca/public/JusticeSystemReview.pdf (viewed February 2012).





Pre-Charge Screening

In Canada, the criminal process most often begins with a decision by the police to initiate proceedings. B.C. is among a minority of provinces in requiring Crown prosecutors to screen cases before formal charges are laid before the court. Through this process, a lawyer for the Crown reviews the police investigation to determine whether there is a reasonable prospect of conviction and whether the public interest would be served by the case proceeding to court.

As the Ministry of Finance recently noted, the process of pre-charge screening is largely responsible for the fact that the costs of prosecuting a case in B.C. are significantly higher than other provinces.⁷ However, there are some indications that these initially higher costs are offset by savings further down the line. Statistics suggest that pre-charge screening has the effect of reducing the number of frivolous or unnecessary cases before the courts. The three provinces that employ a form of pre-charge screening (B.C., Quebec and New Brunswick) enjoy a significantly lower proportion of cases that are ultimately stayed or withdrawn (at 17%) as compared to the remaining provinces (at 36%).⁸ This means that, in provinces without charge screening, an average of 19% of cases are unnecessarily draining resources before ultimately being thrown out. Charge screening could have eliminated those cases at the outset.

Additionally, a higher portion of cases in provinces with pre-charge screening result in a finding of guilt (at 73%) as compared to the rest of Canada (at 62%). Accordingly, almost one in ten cases in jurisdictions without Crown screening go all the way through the criminal justice system, consuming resources, including full trial, without any meaningful outcome. The increased conviction rate in Crown screening jurisdictions is likely due to significant Crown-police consultations *before* a charge is laid that allows additional investigative steps to be taken by police to satisfy legal tests and increase the likelihood of conviction at trial.

Although further research is required to draw definitive conclusions, if one assumes that without pre-charge screening B.C. would match the stay/withdrawal and “not guilty” statistics in provinces without pre-charge screening, B.C. would have approximately 7,000 additional cases in the criminal justice system per year. Other reports have put that number as high at 40,000 new cases.⁹ Those additional cases would add millions of dollars to the cost of operating the system.

Beyond financial considerations, it is also important to note the personal hardship endured by individuals and their families upon being charged with a criminal offence when the cases collapses before a trial or guilty plea. The

⁷ *Ibid.*

⁸ Statistics Canada Summary Tables “Cases in adult criminal court, by province and territory” www40.statcan.ca/l01/cst01/ (viewed February 2012).

⁹ “Don’t Let Police Lay Charges: Justice Branch”, Canada.com, www2.canada.com/cowichanvalleycitizen/news/story.html?id=5d5ee4ea-e4fc-479c-9afd-00978632c55b (viewed March 2012).

Pre-Charge Screening					
	Cases	Guilty	%	Stay	%
BC	40,467	28,681	70.88	10,681	26.39
Alberta	53,375	34,215	64.10	17,411	32.62
Saskatchewan	21,665	14,506	66.96	6,815	31.46
Manitoba	16,849	10,793	64.06	5,963	35.39
Ontario	137,902	81,971	59.44	53,242	38.61
Quebec	54,498	40,079	73.54	5,014	9.20
New Brunswick	7,664	6,082	79.36	1,297	16.92
Nova Scotia	11,760	7,583	64.48	3,876	32.96
Prince Edward Island	1,215	951	78.27	253	20.82
Newfoundland	4,846	3,715	76.66	1,091	22.51
Yukon	1,050	699	66.57	308	29.33
Northwest Territories	1,706	1,201	70.40	489	28.66
Nunavut	1,494	1,057	70.75	354	23.69
Provinces with PCS	102,629	74,842	72.92	16,992	16.56
Provinces without PCS	251,862	156,691	62.21	89,802	35.66

process of being arrested and charged, has dramatic consequences regardless of the outcome of the case. Employment or health care may be interrupted. Accused persons may be forced to endure onerous bail conditions including ones requiring them to have no contact with family and friends, not attend certain locations, or respect a curfew or house arrest. In many cases where charges are ultimately stayed or withdrawn, many individuals and families rightly feel that these incursions to their liberty were unjustified and improper. As a set of legally-trained eyes on a file, Crown

prosecutors may also prevent cases from moving forward where the motivations of the police in laying the charge may be tainted by irrelevant considerations such as political ideology or personal motive. In Toronto following the G20 Economic Summit, for example, a large number of charges were ultimately stayed or withdrawn in court. Of the 292 charges processed as of December, 2011, 86% had been stayed or withdrawn.¹⁰ This unusually high number of cases without merit indicates that the police assessment of these cases may have become clouded by circumstances, at untold

¹⁰ Including cases where the charge was withdrawn in exchange for a peace bond or form of direct accountability: Ministry of Attorney General, “Update on G20 Prosecutions”, December 20, 2011: www.attorneygeneral.jus.gov.on.ca (viewed February 2012).

cost to both the system and the lives of those involved. Maintaining a system of pre-charge screening assists in ensuring that the initial encounter with the justice system is legally justified, minimally-intrusive, fair, and efficient.

Charge screening is an excellent example of the kind of policy that makes the system work. By investing strategically, the system can work in ways that are fairer, faster and cheaper. Paradoxically, the provincial government has hinted that pre-charge screening may be eliminated as a cost saving measure. This sort of short-sighted fiscal management can have unintended consequences. Cutting funding in the wrong places, as the remainder of the report will show, can have dangerous repercussions for the overall functioning of the system.

RECOMMENDATION

Maintain Crown pre-charge screening for criminal offences.

Mental Health and Addictions

Beginning in the late-1980s, the Province of B.C. began the process of de-institutionalizing persons with mental illness. In the Lower Mainland specifically, the closure of Riverview Hospital as a place of confinement meant that many persons diagnosed with mental illness

were able to live in the community. Health care plans at the time proposed a model of mental health services where those in need of care could access treatment and support at small, community-based centres.¹¹ Despite good intentions, that transition has not taken place to the extent envisioned or required. A failure to invest in facilities and support mechanisms for people with mental illness has led to a population of individuals suffering from mental illness who face increased marginalization as well as difficulties securing housing and consistent health care.¹² This population is at increased risk of confrontational encounters involving the police and constitutes an alarmingly large portion of cases before the criminal justice system.¹³ Indeed, an internal study commissioned by the Vancouver Police Department concluded that 31% of police calls involved individuals who appeared to be in poor mental health.¹⁴ However, due to the lack of adequate facilities and available care options, many front line officers respond to these calls by recourse to the *Criminal Code* and the courts. The report states:

When patrol members respond to reports of a person who is known to be mentally ill screaming obscenities and being physically aggressive with pedestrians, they are more inclined to take an offender to jail in the absence of reasonable access to mental health services.

11 BC Mental Health and Addiction Services, “Timeline”: www.bcmhas.ca (viewed February 2012).

12 Lookout Society, “History”: www.lookoutsociety.ca (viewed February 2012).

13 Canadian Mental Health Association, “Study in Blue and Grey, Police Interventions with People with Mental Illness: A Review of Challenges and Responses”, Canadian Mental Health Association-BC (2003): www.cmha-bc.ca (viewed February 2012).

14 Detective Fiona Wilson-Bates, “Lost in Transition: How a Lack of Capacity in the Mental Health System is Failing Vancouver’s Mentally Ill and Draining Police Resources”, Vancouver Police Board (January, 2008): vancouver.ca/police/about/publications (viewed February 2012).

The City of Vancouver estimates that hiring and training a police officer costs \$100,000 annually, at a minimum.¹⁵ The city has 1,327 sworn officers. If one third of all of the calls dealt with by that department could be prevented by better mental health services, the savings to the criminal justice system in that city alone could be as high as \$39.8 million. When one considers the possible savings to the remainder of the justice system in terms of intake, detention, processing and criminal trials, the potential savings are immeasurable. Individuals suffering from mental illness pose unique problems for the courts. Depending on the individual, such persons may have difficulty understanding the court process, have problems retaining and instructing a lawyer or bringing forward a suitable plan for release on bail, all of which has the effect of delaying the proceeding and heightening the risk of that individual being denied bail.¹⁶ While mechanisms in the *Criminal Code* exist to address some of these issues, a lack of dedicated mental health court staff means that there are often significant delays before the individual can be assessed and directed to the appropriate services.

The result is that a significant number of people in B.C. suffering from mental illness end up in our jails. A 2005 study found that 29% of inmates in the B.C. provincial correction system have been classified as mentally disordered, nearly twice the prevalence in the general population.¹⁷ One study in B.C. projected that

B.C. could reduce the number of inmates with severe addiction and mental health by up to 79% if those individuals were properly housed and offered basic services.¹⁸ As it stands, however, our prisons are quickly replacing River-view and its 20th century counterparts as warehouses for the internment of the mentally ill. An investment in mental health services and intervention programs is needed to direct those in crisis to services, rather than into the criminal justice system. For those who do end up before the courts, dedicated mental health workers and a robust mental health diversion program are needed to ensure that people who require mental health care receive the treatment and support they need, rather than being imprisoned.

RECOMMENDATIONS

Invest in community mental health and crisis intervention programs to offer alternatives to criminal justice for those in crisis.

Increase access to dedicated mental health workers and diversion programs to service those with mental disorder who come before the courts.

Provincial Remand Centres

In Canada, the population of inmates detained prior to trial has been steadily on the rise since the mid-1980s. Today, there are more people in prison in B.C. awaiting trial than there are in-

15 City of Vancouver “2012 Operating Budget”, website: www.vancouver.ca/fs/budgetServices (viewed March 2012).

16 Nancy Hall, “Keeping People with Mental Disorders Out of Trouble with the Law”, Canadian Mental Health Association – BC (September 2008): www.cmha-bc.ca (viewed February 2012).

17 Julian Somers, et al., “Mental Disorder, Substance Use and Criminal Justice Contact”, BC Ministry of Health (March 2005), www.carmha.ca/publications (viewed February 2012).

18 Patterson et al., “Housing and Supports for Adults with Severe Addictions and/or Mental Illness in B.C.”, Simon Fraser University Centre for Applied Research in Mental Health and Addiction (2007): www.health.gov.bc.ca (viewed February 2012) at page 79, Table 19.

mates serving sentences.¹⁹ 59% of B.C.'s inmates on remand are awaiting trial, a 17% increase since 1999/2000.²⁰ The numbers regarding youth in the criminal justice system are similar. In the 2009/2010 statistical year, 55% of inmates in B.C.'s youth facilities on any given day were on remand waiting for trial. Only 45% of youth in B.C. jails were actually serving sentences after being convicted.²¹ Excessive reliance on remand and delays in scheduling hearings have effectively undermined efforts by policy-makers in recent decades to reduce the use of prison as a form of punishment for young people.²²

Inmates being held in remand have not been found guilty of an offence. They are either in custody awaiting a bail hearing or have been denied bail, in many cases because an adequate supervision or community support program could not be established. Many of these individuals are poor, First Nations or suffering from addiction or mental health disorders.²³ Given that approximately 35% of criminal charges in Canada never result in a finding of guilt,²⁴ a significant portion of those held in pretrial custody in B.C. will serve time in prison, but will not be found guilty of any offence. These figures raise significant concerns about the unjustified infringement of liberty occasioned by the overuse of remand. Worse, the

disproportionate number of these inmates who are of First Nations heritage, or suffering from mental illness and addictions signals a human rights crisis underway in B.C.'s remand centres.

The cost of housing such a large number of inmates on pretrial custody is not only a justice and human rights concern, it is an efficiency concern. Corrections Canada estimated that the cost of housing an inmate in a provincial institution was, on average, \$162 per inmate per day in 2008. According to the same report, the average stay in remand for an inmate in B.C. was 12 days. Those numbers suggest that the total cost of housing remanded adult inmates in B.C. was over \$26 million four years ago.²⁵ The number of remanded prisoners and the length of time they are waiting for trial is increasing every year – and so is the cost to the system as they sit in cells and wait to be found guilty, or even more concerning, not guilty. As is discussed in further detail later in this report, conditions inside provincial jails also raise concerns about the overuse of remand. In B.C., the dramatic reduction of the budget for corrections since 2001 led to the closure of ten remand centres across the province and this year, the closure of two youth facilities. Centralizing remand centres has meant that many inmates are transported away from their com-

19 Statistics Canada, "Trends in the Use of Remand in Canada" Juristat,(2011) www.statcan.gc.ca (viewed February 2012).

20 *Ibid.*

21 *Ibid.*

22 *Ibid.*

23 *Ibid.*

24 Statistics Canada court tables, *supra*.

25 There are good reasons to believe that the annual cost of housing remanded inmates is significantly higher than it was in 2008. The backlog in provincial courts in recent years has very likely had an impact on the average length of time on remand in BC. If the recent trends have continued towards longer stays and larger numbers of inmates, the total price tag of housing remanded inmates is likely to be far higher than it was in 2008.

munities while awaiting trial, making visits from family difficult, if not impossible, during what are increasingly lengthy pre-trial detentions.

Another consequence of budgetary cuts and jail closures is a spike in the ratio of inmates to corrections officers inside provincial facilities. In 2003, the Ministry of Public Safety and Solicitor General announced in its 2003/2004 service plan that it would more than double the inmate to staff ratios in its institutions from 20:1 to 45:1.²⁶ Unconfirmed reports received from staff at the institutions indicate that those ratios have risen to 60:1 in some institutions.²⁷ Not surprisingly, those changes are related to significant overcrowding, with many provincial institutions now housing more than twice their intended capacity. The North Fraser Pretrial Centre, for example, has at times housed up to 710 inmates, despite originally being built for 300.²⁸ Overcrowding has had a significant impact on the safety and well-being of not only the inmates, but also the staff who are charged with interacting with such a high volume of detainees. Beyond the impossibility of rehabilitation in prisons with 60:1 staff ratios, several reports in recent years have shown that B.C. corrections officers face an unusually high incidence of on-the-job violence and submit a disproportionate number of claims to the workers' compensation fund.²⁹

The cost of housing a prisoner in jail is significantly higher than community supervision, at approximately \$162 per inmate per day. Research indicates that in the sentencing context, imprisonment costs, on average, four times more per prisoner than community supervision.³⁰ Although analogous research has yet to be conducted in the bail context, it is reasonable to expect that the cost of administering community bail supervision programs such as those available in major urban centres, would prove more cost effective than the high rates of remand incarceration currently experienced in B.C. Significant savings both in terms of dollars and cents as well as in terms of the unnecessary loss of liberty could be achieved through an investment in a more robust bail supervision program to reduce the number of detainees held in pretrial custody.

RECOMMENDATIONS

Restore funding to the corrections budget with the aim of reducing inmate-officer ratios and overcrowding at provincial remand centres to increase safety and rehabilitation opportunities.

Invest in community bail supervision programs with the aim of reducing the number of inmates being held on remand who have not been convicted of any offence, and saving money.

26 Ministry of Public Safety and Solicitor General, "2003/2004 Annual Service Plan Reports" (June 2004): www.bcbudget.gov.bc.ca/Annual_Reports/2003_2004 (viewed February 2012).

27 These figures cannot be confirmed from official sources as the relevant figures have not been made public by the ministry.

28 From documents provided by staff at the institutions. These figures cannot be confirmed from official sources as the relevant figures have not been made public by the ministry.

29 Patricia Fisher, *supra.*; Neil Boyd, "The Work of Correctional Officers in B.C., 2008: Changing Working Conditions, Changing Inmate Populations and the Challenges Ahead" (BC Government Services Employees Union, 2008), www.bcgeu.ca (viewed February 2012).

30 Public Safety Canada Portfolio Corrections Statistics Committee, "Conditional Release Statistical Overview, 2011" (Ministry of Public Safety and Solicitor General 2011), www.publicsafety.gc.ca (viewed February 2012).

Legal Aid

Between 2001 and 2004 alone, the grant to the Legal Services Society for legal aid was cut by 41%.³¹ Although some of that funding has been restored in recent years, the grant given to the LSS in 2010 still remained 36% less than it was in 2001.³² Provincial funding of the Legal Services Society has never returned from the deep cuts that began in 2002. The effect has been severe: In 1999/2000, 27,479 people received legal aid for criminal charges. By 2010/11, that number had dropped 26% to 20,224, with well over 7,000 more criminally charged individuals appearing before courts without lawyers.³³ At present, a single person in B.C. with no dependents will typically be ineligible for criminal legal aid if he or she earns more than \$17,500 annually.³⁴ The high cost of hiring a lawyer privately, meanwhile, means that legal representation is simply not a possibility for a large segment of our society. Legal support for criminal accused is critical to ensure that the system works. After a formal charge has been laid and the question of bail has been determined, there is typically a significant delay in the proceedings before a trial can be scheduled. During this “intake” period a number of events may transpire including:

- The accused finding and retaining a lawyer;
- The Crown’s decision about how to proceed with the case; and,
- Discussions between the crown and defence about possible resolutions and/or the manner in which the case will proceed.

This stage of the process will be significantly delayed, however, if an accused person is denied legal aid funding and unable to afford a lawyer privately. For example, it is not unusual for accused persons to be granted additional adjournments in order to pursue an application for legal aid. If legal aid is denied, cases are often adjourned to allow time for the accused to seek pro bono legal services through student legal clinics. Ultimately, however, unrepresented accused consume significant additional time and resources as court staff, duty counsel, judges and Crown prosecutors are regularly called on to assist in explaining the court process or otherwise provide information needed for the accused to make decisions about how to proceed with the case. Mr. Leonard Doust, Q.C., in his comprehensive report arising from the 2011 Public Commission on Legal Aid noted as follows:

Without proper representation, pre-trial processes such as disclosure, admissions of fact, and plea bargaining are ineffective, and unrepresented accused are left

- Assembly and preparation of the police files for disclosure to the accused;
- The accused’s application for legal aid funding;

31 Legal Services Society Annual Reports: www.lss.bc.ca (viewed February 2012).

32 *Ibid.*

33 Annual Report 2000/2001 and Annual Report 2010/11, Legal Services Society of B.C. 2001: www.lss.bc.ca (viewed February 2012).

34 Legal Services Society Website: www.lss.bc.ca (viewed February 2012).

floundering with complex processes, procedural, evidentiary, and legal issues. Sentencing discussions are restricted.³⁵

Indeed, the efficient functioning of our criminal justice system depends on informal plea discussions that regularly go on between Crown and defence.³⁶ The frank and open discussions between lawyers helps to resolve cases in a way that is mutually satisfactory without going to trial. This process is absolutely vital since no public system could possibly handle the cost of each case going to a full trial. Without a lawyer, however, those discussions do not take place to the same extent, if at all, resulting in additional cases going to trial or otherwise draining the court's resources.

Several recent reports have noted the vast societal benefit to a robust and well-funded legal aid program.³⁷ Research in other jurisdictions has shown that investment in legal aid more than pays for itself. Studies from Australia, the United Kingdom and various jurisdictions in the United States have estimated that each dollar spent on legal aid funding can result in savings to the government of anywhere from \$1.60 up to \$30.³⁸ Even if there were no demonstrable cost reduction, however, our legal system is simply too complex for citizens to be able to navigate on their own in any reasonable fashion. Legal aid is a vital component of a justice system that aims to deliver fair and timely justice. The last decade in B.C., however, has shown

anything but a dedication to robust legal aid. A central component of any plan that aims to resolve the problems of delay and costs in the justice system, and to protect the "justice" in that system's name, must show a dedication to a robust and well-funded legal aid program.

RECOMMENDATION

Invest in a robust, publicly-funded legal aid program.

Courtroom Staff and Resources

As discussed earlier, the deepest cuts to the justice system since 2001 have been to court services, which services include court clerks, administrative staff and the sheriffs who provide courthouse security and prisoner transportation. The budget for this sector has been reduced by 42% since 2001 and the effects of those cuts are now manifest in courtroom closures and delays due to a lack of administrative staff and security. But with 42% fewer resources, the administrative end of the criminal justice system in B.C. has nonetheless been asked to process 14.8% more cases.

The reduction in sheriff services has had a particular impact on the administration of justice in recent months with courtrooms closing due to a lack of security. Despite recent additions to the complement of sheriffs in the province, information provided by the BCGEU indicates

35 Leonard Doust, Q.C., "Foundation for Change: Report of the Public Commission on Legal Aid in B.C." (March 2011) www.publiccommission.org (viewed February 2012).

36 Joseph Di Luca, "Expedient McJustice or Principled Alternative Dispute Resolution? A Review of Plea Bargaining in Canada" (2005), 50 *Criminal Law Quarterly* 14.

37 Michael Trebilcock, "Report of the Legal Aid Review 2008", (Attorney General of Ontario, 2008) www.attorneygeneral.jus.gov.on.ca (viewed February 2012).

38 Sharon Matthews, "Making the Case for the Economic Value of Legal Aid: Briefing Note": http://cba.org/bc/practice_resources/pdf/Economic_Value_of_Legal_Aid-Briefing_Note.pdf (viewed February 2012).

that the total number of sheriffs still remains well below 2005 staff levels. The result is that, in the seven-month period between May 1 to November 30, 2011, thirteen courtrooms in the province were closed due to a lack of security.³⁹ In addition to outright court closures, staff shortages have other dramatic effects on the effective administration of justice. In a report entitled “Justice Delayed”, the Provincial Court of B.C. complained of the inability of the judiciary to do its job due to inadequate provincial funding. In particular, the report described the effect of staff shortages as follows:

The Court gratefully acknowledges the hard work and dedication of the staff that currently support the Court under stressful circumstances. However, increasingly, the work of the Court, including its reform initiatives, is frustrated by the lack of Registry and Sheriff’s staff and, in some locations, insufficient numbers of courtrooms to hear matters. The Court Registry and Sheriff’s staff available to the Court have been significantly reduced, and the effect on the Court includes:

- insufficient Registry or Sheriffs staff to open a court and move a judge for more effective case management;
- delay in starting court while waiting for prisoners to arrive from institutions;
- inordinate delay in maintaining court files, leaving the Court with an incomplete record on the day of hearing;

- failure to add or take matters off the Court list prior to the scheduled date; and
- delays in processing Court orders, including entering and vacating arrest warrants.

Shortages of Crown counsel also have a direct and dramatic effect on the system. Crown counsel are expected to perform a wide range of tasks beyond simply prosecuting cases in the courtroom. Some of those duties include vetting police files for disclosure to the defence, conducting resolution discussions, meeting with witnesses and preparing files for trial. In speaking to court staff, it is apparent that inadequate numbers of Crown counsel are available to conduct these tasks. As workloads increase, Crown counsel struggle to complete their jobs in a speedy manner, adding to delays in cases moving through the system.

Today, the effects of these cutbacks on the system are apparent in the waiting time for trial. In the provincial courts, it is not uncommon for the parties to be offered court dates for trial that are more than a year away.⁴⁰ The average time to trial in the provincial court has gone up approximately 28% since 2005.⁴¹

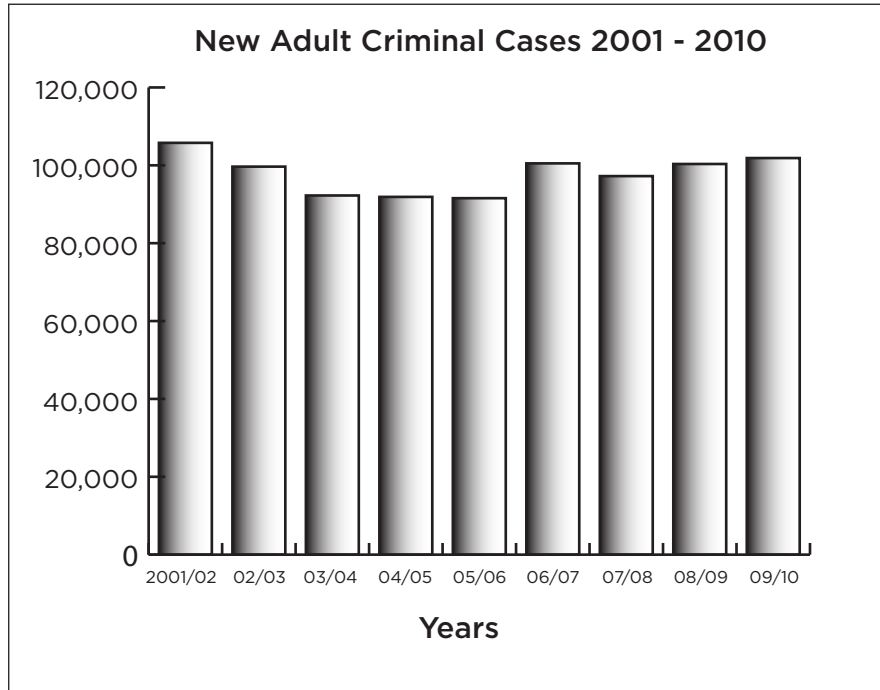
Meanwhile the number of cases that are at risk of being dismissed for undue delay has skyrocketed. In 2001 about 27% of pending cases had been in the system for more than eight months.⁴² Today, 40% of pending cases have

39 Provincial Court of BC, “Courtroom closures Update”: www.provincialcourt.bc.ca (viewed February 2012).

40 See for example, *R. v. Horner*, 2012 BCCA 7.

41 Provincial Court of BC, “Justice Delayed” (September 2012), www.provincialcourt.bc.ca (viewed February 2012).

42 Provincial Court of BC, “Annual report, 2001-2002”, www.provincialcourt.bc.ca (viewed February 2012).



been in the system for more than ten months.⁴³ This situation represents a grave threat to the administration of justice in light of the fact that, under section 11(b) of the *Charter of Rights and Freedoms*, cases that have experienced undue delay at the fault of the state may be dismissed.

A long-standing judicial tradition holds that judges avoid public comment on matters seen to be the purview of elected officials. Nonetheless, Provincial Court judges tasked with the job of enforcing the *Charter* have not shied away from commenting on delay, which itself indicates the extent of the crisis as perceived by our judiciary. In a recent case involving a charge of internet child luring, Justice Steinberg stayed the charge for undue delay and made the following comments in his reasons for judgment:

I find that the consequences of the government’s decision making and priority setting have meant the creation in this case as in many others of an intolerable delay that offends s. 11(b) of the *Charter*. It offends society’s right to have these serious matters aired publicly. It offends the very real need as I said at the very start of these reasons of the need to suppress predatory behaviour on the internet.

The government has spoken through its actions and the stay which I now enter as the remedy under s. 11(b) and 24(1) of the *Charter* is the consequence.⁴⁴

⁴³ Provincial Court of BC, “Justice Delayed – Update” (September 2011) www.provincialcourt.bc.ca (viewed February 2012).

⁴⁴ *R. v. Blatter*, 2012 BCPC 0035.

An additional cause of the present backlog in criminal cases is a shortage of provincial court judges. As the Provincial Court of B.C. recently noted in a series of reports, the provincial judge complement in the province has dropped well below 2005 levels as new appointments fail to keep pace with retirements.⁴⁵ In the period between March 31, 2008 and January 21, 2012, the number of full-time equivalent judges dropped from 141.9 to 121.35.⁴⁶ It is noteworthy that the Court has stated that at least 143.65 full-time equivalent judges are needed to conduct the work of the court, a requirement that has not been met since 2005.⁴⁷

The 14% drop in the provincial judge complement in the last four years was somewhat abated, however, in February, 2012 when the provincial government announced the appointment of nine new provincial court judges.⁴⁸ While this announcement represents a welcome step in the right direction, it is noteworthy that nine additional full-time judges still does not restore the judicial complement to the 2008 level of 141.9 FTE judges, let alone the 143.65 FTEs required for the court to keep pace with its caseload or

manage the backlog. Unless further appointments are made, the existing backlog will worsen.

But furthermore, it is important to note that the administration of criminal justice requires more than judges. To fully address the current backlog, the government must not only continue to restore the roster of judges to appropriate levels but also provide them with the space, administrative support and security required to run the courthouses and conduct the work of the court. Without adequate court support, those new judges will not be successful at reversing the trend of increasing delays.

RECOMMENDATIONS

Continue to increase the complement of provincial judges to match the level required to reduce the current backlog and restore public confidence.

Restore court administrative and security staffing levels to a level sufficient to reduce the current backlog and restore public confidence.

45 “Justice Delayed”, *supra*.

46 “Justice Delayed – Update”, *supra*.

47 “Justice Delayed”, *supra*.

48 Government of BC Press Release, “Nine new judges appointed to courtrooms across B.C.”, (February 7, 2012): www2.news.gov.bc.ca/news_releases_2009-2013/2012AG0004-000116.htm (viewed February 2012).

Court Support and Community Corrections

In Canada, sentencing is largely a matter of discretion for the sentencing judge. Unlike in some regions of the United States where rigid tables and sentencing formulae are used, here a judge must select a sentence that takes into account all the circumstances of both the offence and the offender. To aid in this difficult task, a trial judge must place great reliance on information provided by staff whose job is to conduct interviews and provide reports on such topics as the offender's risk to re-offend, suitability for community supervision, prospects for rehabilitation and issues of First Nations heritage. It is only with the benefit of these careful reports that a judge can deliver a fair and just sentence. In the event that an offender is given a sentence that involves community supervision – for example, a probation order, conditional sentence or conditional discharge – many of these same workers become responsible for providing supervision, support and programming in the community while ensuring that the public is kept from harm.

This often-overlooked component of the justice system is perhaps one of the most vital. It is this arm of the system that attempts to reform and rehabilitate offenders with the aim of reducing recidivism and making our communities safer. At some point, all provincial prisoners will be

released from prison. Will they be better citizens or better criminals after their time behind bars?

However, this same component of the justice system has been neglected by successive budgets in the province of B.C. The corrections budget, which includes both probation officers as well as corrections officers, has been reduced by 29% since 2001.⁴⁹ The result has been staff reductions and, consequently, increasing caseloads per officer. B.C. now has the second-highest level of caseloads per probation officer in Canada.⁵⁰

In preparing this report we spoke to probation officers who complained of unmanageable workloads and difficulty keeping up with their expected duties. Some probation officers are expected to deliver programming for offenders such as anger management and violence intervention. However, increasing workloads means that these programs are rarely completed in favour of preparing reports and other administrative work. As the Auditor General of B.C. noted in a recent report, the failure to complete these programs puts the community at risk:

Currently, only 35% of interventions that are designed to reduce reoffending are ever completed. The lack of completion means potential increased risks

⁴⁹ BC Budget Documents, *supra*.

⁵⁰ Officer of the Auditor General BC, "Effectiveness of BC Community Corrections" (December 2011), www.bcauditor.com (viewed February 2012).

to public safety and costs to taxpayers and victims, should offenders re-offend. Most importantly, by not completing their rehabilitation program, offenders are not provided with the opportunity to change.⁵¹

The provincial government must take action to improve community corrections by restoring funding to previous levels. At present, the system is failing both the offenders who look to the system for an opportunity to change and communities who expect not only a system that keeps them safe, but also works towards building a more sustainable future.

RECOMMENDATION

Reduce the caseload per probation officer in order to free up time and resources for rehabilitative programming to reduce recidivism rates and ensure protection of the public.

Provincial Institutions

In Canada, responsibility for the custody of sentenced offenders is split between federal and provincial governments. Those facing a sentence of two years or more are delivered into the custody of the federal government while those facing a sentence of fewer than two years are held in provincial institutions. Those in provincial institutions face less severe sentences and, generally speaking, represent a population whose prospects for rehabilitation are

more promising. Thus, an offender's time in a provincial institution is a critical juncture that presents the opportunity to deliver programming towards correcting criminal behaviour and encouraging more productive lifestyles. Unfortunately, the experience in B.C. shows that this opportunity is lost for many offenders.

As discussed above, cuts to corrections have meant the closure of many of B.C.'s provincial jails in recent years, relocating many prisoners into central locations. This trend is continuing. The provincial government recently closed two institutions for female youth in Victoria and Prince George, requiring the relocation of youth held at those facilities to Burnaby. This trend has meant that offenders are moved away from their home communities, cutting off support from family and loved ones.

Also concerning are issues of overcrowding, staff shortages, and a corresponding rise in inmate-to-officer ratios. The number of full-time equivalent employees in the correctional system has been reduced from about 2,200 in 2001 down to approximately 1,600 presently.⁵² Since 2002, the ratio of inmates to officers has risen from 20:1 to as high as 60:1.⁵³ Many institutions regularly house more than twice their intended capacity. The Kamloops Regional Correctional Centre, for example, has, at times, housed 389 inmates, despite being designed for only 168. During the detention of Tamil refugees in the summer of 2010, the Fraser Regional Correctional Centre held 811 inmates, more than three times its intended capacity of 254.⁵⁴

51 *Ibid.*

52 Documents Provided by the BC Government Services Employees Union, February 2012. Formal counts of staff and prisoners have not been released by the relevant ministries of the provincial government.

53 *Ibid.*

54 *Ibid.*

Overcrowding presents a significant problem not only for the basic living requirements of inmates but also for their safety and prospects for rehabilitation. Howard Saper, the Correctional Investigator for Corrections Canada noted in a recent annual report the effects of prison overcrowding:

It is also important to understand that the serious, if unintended, effects of prison crowding reach far beyond the provision of a comfortable living environment for inmates. Aside from the immediate issue of physical capacity, prison crowding has negative impacts on the system's ability to provide safe and secure custody. It is well understood that prison crowding can lead to increased levels of tension, frustration and institutional violence, which can jeopardize the safety of staff, inmates and visitors. According to CSC data, the number of major institutional incidents increased during the reporting year—including preventable deaths in custody, violent assaults, serious bodily injury and use of force. As correctional populations increase, timely access to offender programs, treatment and meaningful employment opportunities measurably diminish, resulting in delays for safe reintegration into the community and

further exacerbating both population management and cost pressures.⁵⁵

The risk of inter-inmate violence is especially grave in light of the rise of gang-involved youth in B.C. prisons. Several reports have noted that the prison population is increasingly young and gang-involved.⁵⁶ Saper, has also noted that inadequate management of gang issues in prisons can lead to increased violence and death.⁵⁷ Overcrowding in B.C.'s provincial institutions raises the potential for increased gang violence caused by difficulties adequately keeping rival gang members separated. From 2004 to 2011 there were 37 deaths in provincial correctional institutions, 51% of which were unnatural deaths by homicide, suicide or accidental overdose.⁵⁸ More has to be done to ensure that custodial sentences do not unintentionally become death sentences.

Overcrowding also poses problems for an inmate's prospects of rehabilitation and re-integration into the community after release. A large number of inmates face vulnerabilities caused by homelessness, mental health, addictions and racial discrimination. A study by the John Howard Society of jails in the Toronto-area concluded that 44.6% of inmates were at risk of homelessness and, indeed, a stay in jail increased the incidence of homelessness by about 40%.⁵⁹ The Metro Vancouver Homelessness count, which is a significant undercount of the homeless popu-

55 Howard Saper, Annual Report of the Office of the Correctional Investigator, 2009-2010" (Corrections Canada, 2010), www.oci-bec.gc.ca (viewed February 2012).

56 Neil Boyd, 2008, *supra*.

57 *Ibid*.

58 Office of the Chief Coroner, "Deaths of Inmates of Correctional Facilities in B.C., 2004-2011", Ministry of Public Safety and Solicitor General, (2012).

59 John Howard Society of Toronto "Homeless and Jailed: Jailed and Homeless" (August 2010). www.johnhowardtor.on.ca (viewed February 2012).

lation in Vancouver and area, found that 1% of people living in the streets of Metro Vancouver openly acknowledged they had recently been released from prison and had nowhere to live.⁶⁰ Although further research is required to confirm where B.C. inmates live after they are released, given the rate of overcrowding and the lack of services available to inmates while in prison, one may reasonably conclude that many of B.C.'s inmates struggle to find housing, support and healthcare upon release. While prison overcrowding may save dollars in the short term, the long-term costs to society are immeasurable when one considers the costs of related phenomena such as:

- Increased homelessness;
- Increased recidivism;
- Increased injuries to prisoners; and,
- Increased transmission of diseases like HIV and hepatitis among prisoner populations through illicit drug use.

Prison overcrowding affects not only inmates but also the staff who are tasked with supervising and caring for the inmates. As discussed earlier, B.C.'s corrections officers face the highest levels of on-the-job violence of all public employees. According to a recent study, over 87% of corrections officers have been exposed to blood, 77% had received a credible verbal threat and 36% had been assaulted on the job.⁶¹ An alarming 17% of officers had wit-

nessed the unnatural death of an inmate by either homicide or suicide within the past year.⁶²

The vast majority of corrections officers report that the job has become more stressful over the years as a result of an increase in these incidents. Indeed, in preparing this report, we spoke to corrections officers who reported that the number of incidents requiring a "code yellow" (where an officer requires assistance) has been on the rise in recent years; however, we have been unable to find government statistics tracking these incidents.⁶³

In addition to the problems these incidents pose for workplace health and safety, when officers respond to crisis situations, wards and institutions are typically put on "lock down", affecting not only the liberty of the inmates but also interrupting programming, health care, family visits and professional assistance.

Prison overcrowding is set to become a larger problem unless the provincial government takes firm steps now. The Federal Government's omnibus crime legislation includes provisions for additional mandatory minimum sentences and eliminating the possibility of house arrest for certain offences.⁶⁴ Most, if not all, of these new prison sentences will be served in provincial institutions, placing the bill for these new measures directly at the doorstep of the prov-

60 Greater Vancouver Regional Steering Committee on Homelessness, "Homelessness in Metro Vancouver: A Comparative Community Profile" (2010), www.stophomelessness.ca, (viewed February 2012).

61 Neil Boyd, 2008, *supra*.

62 Neil Boyd, "Abnormal Working Conditions", (November 2011), www.bcgeu.ca (viewed February 2012)

63 Based on anecdotal evidence from correctional officers. The data concerning these incidents has not been made public.

64 Bill C-10, *An Act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and other Acts*, 1st Sess., 41st Parl., 2011.

inces. The government of Ontario anticipates that implementation of the new legislation will cost the province up to \$1 billion while Quebec has estimated the costs to its province are on the order of \$600 million.⁶⁵ Although B.C. has yet to release its estimated cost increases, new federal legislation is set to cause a spike in the province's inmate population. Assuming the province will continue its public support for these misdirected federal proposals, without additional space and staff, these policies could result in grave consequences for the province including increased prisoner violence, deaths in custody, on-the-job injury, and increased recidivism among offenders on release. Any plan for justice reform that truly aims to reduce recidivism, respect human rights and main-

tain a healthy and sustainable workforce must show a commitment to its correctional system. In B.C., inmate-officer ratios must be reduced to 2002 levels of 20:1 or less and funding must be restored for rehabilitative and behavioural programming for inmates in provincial institutions.

RECOMMENDATIONS

Reduce inmate-corrections officer ratios to increase staff and inmate safety.

Invest in correctional programs for inmates to reduce recidivism and reduce healthcare and policing costs on release.

65 CBC News, "Federal crime bill will cost Ontario \$1B, minister says", January 23, 2012, www.cbc.ca (viewed February 2012).

The problems faced by the justice system outlined in this paper have not been ignored by the system's various participants. The Trial Lawyers Association has commenced job action protesting cuts to legal aid services.⁶⁶ The Canadian Bar Association has vocally highlighted the problems faced by a chronically underfunded system⁶⁷ and fought cuts to legal aid in the courts. The Chief Justices of both the Provincial Court of B.C.⁶⁸ and the Supreme Court⁶⁹ have issued damning statements highlighting the inability of the judiciary to effectively deliver justice without proper support and funding.

Most importantly, however, the provincial government has recently acknowledged the problems in the justice system with the release of an auditor's report and a Green Paper indicating directions for potential reforms. Disappointingly, the terms of reference of this paper miss many of the important issues faced by B.C.'s justice system.

The Green Paper, released on February 8, 2012, and titled "Modernizing B.C.'s Justice System" addresses in vague terms problems with the administration of justice in B.C. and suggests areas of reform. The problems addressed by the paper suggest gross inefficiencies and lead with the observation that, despite a decline in

crime rates, the costs associated with administering justice have gone up in recent decades. One of the paper's central propositions is crime is decreasing while the cost of managing the criminal justice system has increased.

Although the number of new cases in the court dropped somewhat between the years 1997 and 2003, the number of cases in the last decade has remained stable. In fact, during the period 2001 to 2009, highlighted by dramatic provincial spending cuts, the number of cases has gone up. In 2001 B.C.'s justice system handled 40,510 cases with, in most situations, 30% more resources than it has available today. In 2008/2009, B.C.'s justice system handled 46,472 cases, an increase of 14.8% despite an overall decline in crime rates.⁷⁰ In other words, the justice system has been doing more with less for quite some time. The central thesis of the Green Paper is critically flawed, and remarkably deficient in its analysis.

Given the increasing complexity of criminal trials over the years, the increased population in the province, and a slow but steady rise in the number of files handled by the justice system, a slow but steady rise in justice spending is reasonable and not at all indicative of problems in its administration or management. That our criminal justice system has

66 Trial Lawyers Association of BC: www.tlabc.org (viewed February 2012).

67 Canadian Bar Association, www.cba.org (viewed February 2012).

68 "Justice Delayed", *supra*.

69 Remarks of Chief Justice Baumann, *supra*.

70 Statistics Canada, "Adult criminal court stats 2008/2009", *Juristat* Vol. 30, No 2, September 2010, www.statcan.gc.ca (viewed February 2012).

not already collapsed after cuts in excess of 30% while taking on 14.8% more cases in the same period speaks to significant efficiencies already realized within the system – not to a bloated and indifferent bureaucracy that is resisting the realities of a reduced crime rate.

The language in the Green Paper invokes a business administration model that is wholly unsuited to the administration of justice. A fair and efficient justice system and an independent judiciary are an expensive but necessary component of a democratic society. Although perfect efficiency is surely desirable, the most efficient justice system is not the same as a justice system that respects fairness and due process. Indeed, history has shown examples of justice systems whose efficiencies are synonymous with their brutality. In Canada, due process rights such as proof beyond a reasonable doubt and the right to a fair trial may be costly, but these protections are an essential investment in a democratic society.

The provincial government's review seems one aimed at a target that does not exist: a bloated and inefficient justice system. B.C.'s justice system has been cut to the bone, handles almost 15% more cases on 30-40% fewer resources, and is showing the signs of having given all it can. The failure of the Green Paper to consider obvious issues that dramatically decrease policing, jail and criminal trial costs is striking. These issues include:

- The savings afforded by effective mental health intervention programs that give police officers alternatives to the criminal justice system for dealing with obvious mental health crises;

- Funding bail supervision programs that increase access to alternatives to pre-trial detention;
- Broader legal aid and justice system funding that reduces backlogs and improves efficient progress through the system so that more prisoners are in jail serving sentences, not waiting for trial;
- Improved programming and support through community corrections and the savings they afford in reduced recidivism;
- Improved programming and support in provincial institutions and the savings they afford in reducing post-release homelessness and recidivism; and,
- Reduced inmate-to-officer ratios and the potential savings in workers' compensation claims, and healthcare costs for prisoners both during and after incarceration.

The current problems faced by the justice system are not irreversible. There are opportunities for reform. Any reform measures, however, should be done with the benefit of hindsight and the impact of previous "reform" initiatives on where we find ourselves in B.C. today.

The restoration of funding to key justice programs is imperative if court backlogs and wasteful spending on overcrowded remand centres are to be eliminated. At the same time, reform measures should be considered that reduce overreliance on the criminal justice system – especially for those with mental illness and addiction. As the past decade has shown, however, such reforms require patience and the funding of the justice system as an essential service of a democratic society.

JUSTICE DENIED

The Causes of BC's Criminal Justice System Crisis

The Province of BC and the judiciary of BC agree: The province's criminal justice system is in a crisis.

What is not clear is how we got here, and who is to blame.

Justice Denied answers the question of whether responsibility for this crisis should be assigned to the provincial government for dramatic budget cuts to the agencies that make up our criminal justice system, or whether a bloated justice system in BC has failed to respond to declining crime rates and concomitant reduced burdens on the justice system.



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