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Presentation to the Standing Senate Committee on Legal and Constitutional Affairs

Study on Matters Pertaining to Delays in Canada's Criminal Justice System

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Introduction

- Distinguished members of this Committee, thank you for the invitation to discuss matters relating to delays in criminal justice proceedings.
- I am here today as a member of the Law Amendments Committee of the Canadian Association of Chiefs of Police (CACP) and I am speaking on behalf of the President, Chief Clive Weighill and CACP members.
- The mandate of the CACP is “safety & security for all Canadians through innovative police leadership”. This mandate is accomplished through the activities and special projects of a number of committees and through active liaison with various levels of government and departmental ministries having legislative and executive responsibility in law and policing.
- Law enforcement organizations in Canada understand the importance of safeguarding the fundamental rights guaranteed by the Canadian Charter of Rights and Freedoms, including the section 11(b) right to be tried within a reasonable time. It goes without saying that delays in criminal justice proceedings place an enormous burden on the law enforcement community and the CACP welcomes this study.

Overview

- Let me begin by briefly describing our operating environment. Despite a significant decline in reported

- crime rates, studies have demonstrated that demands on policing have increased for three primary reasons:
- The changing nature of crime,
 - The requirements placed on the police by the criminal justice system and
 - Increased calls associated with mental health and social disorder issues.
- Over the past several decades, criminal investigations have become increasingly complex and resource intensive. Judicial decisions, new legislation, the increasing use of technology, disclosure obligations and the multi-jurisdictional nature of crime, to name a few, have impacted the conduct of investigations.
 - A 30-year analysis of policing in British Columbia, completed in 2005 by the University College of Fraser Valley, reveals that the time required by police to complete an investigation increased substantially¹. To complete domestic assault and impaired driving investigations, it took 964% and 250% more time, respectively. The analysis also determined the number of procedural steps required to complete an investigation increased exponentially as well. For example, a drug trafficking investigation increased from 9 procedural steps to 65. Importantly, since this study was concluded, the policing environment has only become more complex and demanding with recent case law and expanding use of new technologies.
 - The CACP also concurs with Justice LeSage's testimony that the criminal justice systems is, in many ways, too complex. Data presented to this Committee by Statistics

¹ [http://www.ufv.ca/media/assets/ccjr/ccjr-resources/ccjr-publications/30_Year_Analysis_\(English\).pdf](http://www.ufv.ca/media/assets/ccjr/ccjr-resources/ccjr-publications/30_Year_Analysis_(English).pdf)

Canada also seems to support the view that the criminal justice system is more complex: the number of reported crimes has significantly declined, the number of criminal court cases has decreased and yet, the time it takes to process a case through the criminal court has remained stabled.

- When scrutinizing delays in Canada's criminal justice system, there may be value in conducting the examination from two perspectives: pre-charge and post-charge.

Pre-Charge

- Police are at the front-end of the criminal justice system and decisions made by the police directly impact criminal justice proceedings. These decisions include whether or not to investigate; the breath, scope and timeliness of investigations; and exercising discretion regarding alternative measures or formal charges.
- In response to the frustrating delays in criminal proceedings as well as the associated resource burden, the police community has been quick to embrace new initiatives that minimize delays, reduce the burden on parties to the criminal justice system, and maintain public safety objectives. Let me touch on a couple.
- On a number of occasions, earlier testimony touched on British Columbia's Immediate Roadside Prohibition (IRP) Program which is often referred to as one of the toughest in Canada. A recently released draft of the Report on BC's 2010 Impaired Driving Initiative² suggests roadside suspension have contributed to an estimated reduction of

² <http://mtplaw.com/wp-content/uploads/2016/01/F244353-IDI-Draft-Report-Jan-2015.pdf>

36 fatal collisions each year. Another report completed in 2012 by Geoffrey Cowper entitled [A Criminal Justice System for the 21st Century](#)³ noted a significant reduction in the number of new cases coming to the Provincial Court in 2011/12 following the introduction of BC's IRP Program in 2010. In fact, the number of impaired-driving Reports to Crown Counsel dropped by 8,000 that year.

- The police are also supportive of alternative measures and pre-charge diversion programs. Given that offences against the administration of justice, such as failure to comply and breach of probation, now account for significant percentage of adult criminal courts⁴, consideration might be given to how to better leverage pre-charge diversion programs for these offences. More social programming focusing on non-violent offenders suffering from addictions or mental illness could result in fewer people being dealt with through the criminal justice system, particularly in relation to offences against the administration of justice. However, for these programs to have a meaningful impact, I cannot over emphasize the need for them to be adequately resourced and competently staffed.
- This Committee appears to be interested in other reforms that could potentially reduce delays such as an expanded use of the *Contraventions Act*.

³ <http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/justice-reform-initiatives/cowperfinalreport.pdf>

⁴ Adult criminal courts in Canada completed 360,640 cases in 2013/2014, of which 39% included at least one offence against the administration of justice among the charges.
http://www.parl.gc.ca/sencommitteebusiness/Notice.aspx?parl=42&ses=1&Language=E&comm_id=1011&meeting_id=420048

- In August 2013, the CACP passed a resolution calling on the federal government to amend the *Controlled Drugs and Substances Act* and the *Contraventions Act* in order to provide police officers with the discretionary option of issuing a ticket for simple possession of cannabis (30 grams or less of cannabis marihuana or 1 gram or less of cannabis resin) where a formal criminal charge pursuant to the CDSA would not be in the public interest⁵. At that time, the CACP felt that processing simple possession of cannabis cases through the criminal court placed a significant burden on the entire justice system from an economic and resource utilization perspective. The CACP was also seeking to expand the range of enforcement options available to police officers to more effectively and efficiently address the illicit possession of cannabis. While this may be a moot point given the current Government's commitment to legalize marihuana, what it demonstrates is the desire of the CACP to find better ways to efficiently and effectively deliver public safety outcomes.

Post-Charge

- Despite efforts to achieve public safety outcomes through non-judicial measures, many investigation will advance to criminal court cases. As mentioned earlier, the evolving nature of crime and judicial decisions have greatly impacted investigative workloads and processing times.
- From a police perspective, there are numerous factors that contribute to delays in criminal proceedings after the laying of charges including:

⁵ <https://www.cacp.ca/resolution.html>

- Accused appearing unrepresented, discharging legal counsel at the 11th hour or failing to appear;
 - Guilty pleas at the beginning of a scheduled trial;
 - Case complexity particularly in cases with multiple accused, foreign evidence and witnesses, the use of sensitive investigative techniques or classified information sources, lengthy judicial authorizations, and/or digital evidence;
 - Delays in completing disclosure due to the absence of electronic disclosure and sweeping and unfocused disclosure requests such as transcribing all statements and audio/video recordings; and
 - In other cases, frivolous and unmeritorious pre-trial applications.
- These delays impact all criminal justice participants:
 - The accused's life remains in turmoil;
 - Witness/victim memories fade and they become frustrated with the system; and
 - Police organizations incur unnecessary costs as well as diverting finite resources from other priorities.
 - Take for example, the impact of last-minute trial cancellations or plea agreements on police witnesses and budgets. In addition to the resource implications related to backfilling shifts to maintain minimum response capacity, the Edmonton Police Service spends approximately \$2.6M annually in court overtime. In many instances, officers do not testify.
 - Even cases involving summary conviction offences can place an enormous strain on the system. On February 19th, there was an article in Le Journal de Montreal concerning a mega-trial involving unlawful assembly and

mischief charges which are being prosecuted by way of summary conviction. The offences date back to August 2014 and the trial is scheduled for 3 months in April 2018. According to reports, there are 65 accused, 78 witnesses and large volumes of video evidence.

- In complex cases, the investigative and prosecution strategies have the potential to significantly impact criminal proceedings. Therefore, early and ongoing consultation between the police and the crown assists with case management. There is little public good achieved by investing millions of dollars of finite police capacity into cases that cannot be effectively prosecuted.
- As you have heard, disclosure continues to present enormous challenges for the police. The Report on Disclosure in Criminal Cases (June 2011)⁶ by the Steering Committee of Justice Efficiencies and Access to the Justice System offers some insight into the challenges. All criminal justice participants must do their share to reduce this burden. For example, police have the responsibility for early transmission of a well-structured and focused disclosure package to the Crown. There also needs to be an effective process to resolve disclosure disputes early, the standardization of disclosure and the availability of electronic disclosure.

Criminal Justice in the Digital Age

- One final observation before concluding my remarks.
- Society is increasingly reliant on new technologies and the digital age is transforming our lives like never before.

⁶ <http://www.justice.gc.ca/eng/rp-pr/csj-sjc/esc-cde/rod-crc/toc-tdm.html>

While the Internet and cyberspace have enriched our lives, technologies also provide new opportunities for criminal entrepreneurs, organized crime and terrorists. With a touch of a button from anywhere in the world, thousands of people and businesses can be victimized or critical services can be disrupted.

- Despite some limited successes, our assessment is that Canada's law enforcement agencies and its criminal justice system are ill-equipped to deal with criminality in cyberspace. Criminal use of strong encryption, anonymizing technologies and the Darknet as well as the borderless nature of these crimes make it extremely challenging and resource intensive for police to detect, investigate, disrupt and prosecute these cases.
- Today, this Committee is studying matters pertaining to current delays in Canada's criminal justice system. But with the fact that Canadians are increasingly living their lives in cyberspace, the CACP would encourage this Committee to consider a future study on the ability of our criminal justice system to effectively and efficiently respond to and address the increasing number of offences in cyberspace.

Conclusion

- In closing, reducing delays in criminal proceedings requires a comprehensive approach and a willingness on the part of all criminal justice professionals to be part of the solution. In his report to the BC Minister of Justice and Attorney General, Mr. Cowper referenced the "culture of delay" in the court system that is resistant to change. I

can assure you that the CACP welcomes innovative reforms that reduce the burden on policing, enhance public safety and improve the experience of those interacting with the criminal justice system.

- Thank you and I look forward to answering any questions you have.