

Study on matters pertaining to delays in Canada's criminal justice system

Senate Standing Committee on Legal and Constitutional Affairs



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The Canadian Resource Centre for Victims of Crime (CRCVC) is grateful for the opportunity to provide comments to the members of the Senate Standing Committee on Legal and Constitutional Affairs today with regards to delays in the Canadian criminal justice system. The CRCVC has been working since 1993 in Canada to voice the needs and concerns of persons harmed by serious crime. We provide victims, survivors and stakeholders with support, research and education and we work to ensure victims' rights are recognized and respected in the criminal justice system.

In relation to delays in Canada's criminal justice system, we would point out that the victim's interests, constraints, and responsibilities are not always at the forefront, nor are they even considered in many cases when Crown and defense counsel are setting court dates. For that matter, the accused has constitutionally-protected rights to be tried within a reasonable time, and the Askov case has even resulted in many cases being thrown out for that reason. Yet, there are no such protections for victims. Our Centre believes constitutional protection is needed for victims in relation to delays. This is because having constitutional rights for offenders (as expressed in the Charter and the Askov case) is a prima facie form of inequality for victims, whose "rights" (such as they are) often tend to be vague, unenforceable, legislatively defined at best, and built around, rather than substantively changing, the power structure of the criminal justice system. They are largely a form of "symbolic politics" that make it look like something is being done, while substantively delivering very little. Indeed, while victims are not explicitly referenced in the Charter, other groups not specifically mentioned have been read into the equality rights section of the Charter (s.15) by the courts, so this could possibly become a legal issue costing the government time and money if it is not addressed.

Delays and adjournments have a significant negative effect on the victim and their family and include:

- Ongoing stress and anxiety;
- Getting prepared to testify only to have the matter adjourned for one reason or another (for example, counsel is not available, conflict in judge's schedule, etc.);
- Inability to move forward with their lives;
- The longer the charges are before the courts, the less connected the victim feels.

We understand from speaking with victim services colleagues who work with victims in courtrooms, that a stay in proceedings or a successful 11b application is rare, but devastating. A Crown makes the decision when they don't have enough evidence to proceed to trial. When a stay in proceedings occurs it is extremely upsetting to victims. They have been robbed of their day in court - they will never know what the outcome of their court case will be. They have done everything right by coming forward to the police, providing a video statement and often testifying in court at a preliminary hearing and after a lengthy period of time, it all stops with a stay due to the lack of available court time or judges. The victim feels powerless and is re-victimized by the criminal justice system.

What can we do about all of this? We know that the wait times are much too long. An accused may appear before the courts many times before a trial date is ever set or sometimes it takes years for a plea to be entered. The longer the criminal justice process is dragged out, the longer the victim has to suffer and is constantly reminded of the crime. Victims have to take time off work again and again if they wish to be present in court. Victims often do not feel

psychologically safe during this process. They lose sleep, lose focus and lose their faith in the justice system.

Many have to travel quite some distance (sometimes inter-provincially) to attend court only to arrive in court to hear that it has been postponed. Or, sometimes trials begin, and there are a number of adjournments and postponements, or scheduling problems and victims learn that they have to come back in a couple of weeks. It is very costly for victims to take time off work, travel, secure day care and park their vehicles at courthouses during trials (only some of these expenses are covered). While plea bargaining is a necessary part of the criminal justice system, some victims worry that pleas are sometimes reached because they free up court time and not because the prosecution only has enough evidence for a lesser charge.

Victims and their advocates remain very concerned by lengthy delays reported frequently in the media. My Board members from across Canada report that homicide cases are taking 4-5 years to get to trial and this is not acceptable.

Victims across Canada have told us:

1. Accused persons use delay tactics to gain an advantage. They fire their lawyers again and again or try to represent themselves. Some will delay until they can assert that their fair trial rights are infringed and ask for Askov application to be granted. We hear this particularly in family violence cases.
2. Many victims feel that justice delayed is justice denied! As an example, we raise the case of Michael Wassill, who was attacked in his family home on May 15, 2013. He was sheltering a

female friend from an abusive male when the attack took place. He later died on May 23, 2015 from injuries he suffered in the attack. Michael was just shy of his 21st birthday and his death has irrevocably changed his mother Betty-Ann's world and that of his father, two sisters and numerous other relatives and friends. Their overwhelming grief is compounded by the fact the trial for the accused will not take place until January 2017. Although a trial will not bring closure to their grief, it will bring closure on the violent incident that brought his loss. To the Wassill family, setting a trial almost 4 years after the incident is an egregious injustice. In their case, the accused was apprehended 2 hours after the incident occurred, with two eye witnesses and forensic evidence linking the accused to the crime. The family is frustrated that there is no ability to address the timing of this trial when the Crown and police detectives are so confident in the strength of the case against the accused. The victims are concerned and disappointed that there is no mechanism for the system to expedite the trial dates – to be set within a reasonable length of time – to ensure that witnesses can be called in a timely manner and victims' families are not left waiting years for peace and some finality to their loved one's case. Lengthy trial waiting periods cause further anxiety and stress for the families who are grieving and cannot begin to move forward with their lives.

Perhaps we can address some of the issues of delays through ensuring adequate resources in courtrooms, for example, more Crowns, judges, staffed courtrooms (clerks/reporters), efficiencies to reduce lost court time (e.g., fully operational technology including CCTV equipment). But, the efficiency of the court system relies on so many players and it is a complex balancing act. Sometimes a Crown will resolve a case to avoid having the victim testify

(sometimes twice) and ensure a conviction rather than risk an acquittal and nothing for the victim.

Rather than focus already strained fiscal resources on improving efficiencies, we feel the federal government should address the delays in the criminal justice system through the prevention of crime in the first place. The most effective and cost effective way to deal with crime is prevention, all the rest is picking up the pieces. Unfortunately, tinkering with criminal justice has never worked and will not work. Victimization surveys by Statistics Canada (2014) indicate that one in five Canadians aged 15 and over were a victim of a common crime in the previous 12 months. That is over 2.2 million Canadians, or 7.6% of adults who were victims of a violent crime such as a physical assault. Additionally, 14% of households reported experiencing some form of theft. Adapting Department of Justice Canada estimates, crime costs close to \$10 billion each year in Canada including tangible losses such as property loss, wages and costs of health care are. Intangible losses such as pain, suffering, and loss of quality of life due to the trauma of crime cost an estimated \$45 billion. This leads to a combined total cost of \$55 billion. Beyond the harm to victims and cost to society, crime is a pressing issue affecting Canadian municipalities. We strongly suggest that you invite the Canadian Municipal Network for Crime Prevention and Dr. Irvin Waller at the University of Ottawa to provide you with knowledge of proven crime prevention strategies. Our understanding is that investing the equivalent of 10% of what we currently spend on policing, courts and corrections in effective crime prevention can reduce crime sustainably by as much as 50% and thereby reduce the current demands on the criminal justice system.

Thank you for your attention this morning and for considering victims of crime as you make recommendations to address delays in the criminal justice system. I would be pleased to answer your questions.