Cliff: 499332
Date Prepared: February 6, 2014

MINISTRY OF JUSTICE
POLICING AND SECURITY BRANCH
BRIEFING NOTE

PURPOSE: For INFORMATION for Honourable Suzanne Anton, Attorney General and Minister of Justice

ISSUE: Greg MATTERS Inquest Recommendations for policing.

SUMMARY:

- On February 1, 2014, the Verdict at Inquest (see attached) was released in the case of the death of Mr. Greg Matters who was shot and killed by a member of the North District RCMP Emergency Response Team (ERT) in Prince George on September 10, 2012.

- The Verdict at Inquest includes nine recommendations from the coroner's jury (seven directed at the Minister of Justice, Director of Police Services Division (PSD), and the Commanding Officer of the RCMP; two are directed at the federal Minister of National Defence and Veteran Affairs).

- The recommendations directed at the provincial government concern four topic areas that are within its purview. A summary of those topics and the initial response from Policing and Security Branch is as follows:

    - **Cameras on ERT members during deployment** (Recommendation #1): *PSD is currently examining the potential for police body-worn video (BWV) in British Columbia.*

s.13, s.14

s.13, s.14

    - **Less-lethal weapon inventory and training** (Recommendations #2 and #3): *Both the Arwen gun and the Beanbag shotgun (BBSG) are extended range impact weapons that fire less-lethal rounds and are utilized in the same general circumstances. The RCMP currently utilizes the BBSG and not the Arwen as recommended by the Jury. All ERT members currently have training and certification requirements in the use of less-lethal weapons. It is accepted that an ERT team should have a variety of less-lethal weapons available; however, it may not be necessary or desirable that all members are trained on every weapon. PSD is seeking further consultation with the RCMP regarding these recommendations.*

    - **Mental health training and assistance** (Recommendations #4 and #5): *The* British Columbia Provincial Policing Standards (BCPPS) *currently require all front-line police officers to undertake provincially approved crisis intervention and de-escalation training (CID), and take refresher training once every three years. As part of the work on Action Item #12 of the* British Columbia Policing and

Community Safety Plan *(develop police-related strategies for persons in crisis with mental illness and/or addictions),* s.13

s.13

- **RCMP police dogs** (Recommendation #6): *PSD is currently working with police agencies to develop appropriate BCPPS regarding police dogs in British Columbia. Police dogs are already currently trained to apprehend subjects, whether or not they are armed. The BCPPS under development will include apprehending an aggressive / armed person as part of the mandatory annual certification requirements.*

BACKGROUND:

- The death of Mr. Matters received considerable media attention initially because it was the first death investigated by the newly formed Independent Investigation Office (IIO). The circumstances around the shooting death of Mr. Matters resulted in national media coverage of the Inquest. Mr. Matters was a veteran suffering from Post-Traumatic Stress Disorder, who had previous encounters with the police. Family members were also critical of the police handling of the incident.

- The IIO investigation of the death of Mr. Matters cleared the officers involved.

- PSD staff were subpoenaed to testify at the Inquest with respect to provincial policing standards. Testimony included discussion of the current powers of the director of police services to set binding standards as well as historical information concerning previous standards and audits.

- A key line of questioning during the Inquest concerned recommendations from previous coroner juries for the implementation of audio/visual recording devices during police deployments (either on lapels or dashboards). Staff advised the jury that PSD was aware of the recommendations and would consider them as part of the standards development process and that staff time was currently dedicated to developing standards in response to the Missing Women Commission of Inquiry as well as high-risk use of force issues.

Matters Inquest Jury Recommendation 1: Audio/Visual Recording device be worn by all ERT members upon deployment.

- PSD is currently examining the potential for police BWV in British Columbia. s.14

s.14

- The American Civil Liberties Union and BC Civil Liberties Association have stated their support of BWV as a mechanism to enhance police accountability.

- BWV has been studied and/or piloted by police in the international setting (e.g., the UK, California, Florida and New Mexico). Studies found increases in arrests and charges;

decreases in complaints against police; decreases in time officers spent on files; and decreases in the use of force by officers when BWV was used. There was some evidence of a positive public response to BWV.

- In the Canadian context, the RCMP as well as police in the cities of Montreal, Ottawa, Toronto, Edmonton, Calgary and Victoria have examined, or are presently examining, the use of BWV.

- In 2010, the Victoria Police Department released the findings of its BWV study. They found benefits to BWV including: valuable evidence for court; decrease in public aggressiveness; reduction of public complaints; increase in charge approval rate and; 91% of convictions using BWV evidence occurred by guilty plea. However, the study also noted the complexity in managing the large volume of BWV data.

- The RCMP is currently undertaking research on the feasibility of implementing a BWV program for general duty members. A report on findings related to privacy, legal, storage and retention issues is expected in November 2014.

- The Vancouver Police Department (VPD) is expected to pilot BWV in 2014.

- A number of challenges have been identified with respect to BWV, including:

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s.13, s.14

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- PSD will monitor the RCMP and VPD pilot projects and consider the results as part of its ongoing analyses of the BWV.

Matters Inquest Jury Recommendation #2: The Arwen be included in the RCMP's less-lethal weapons.

- Both the Arwen gun and the Beanbag shotgun are extended range impact weapons that fire less-lethal rounds (i.e., not likely to cause death, although death is not impossible). Both weapons are utilized in the same general circumstances – that is, when attempting to incapacitate someone with less-lethal rounds who is some distance away (too far for a conducted energy weapon).

- There are advantages and disadvantages to both the Arwen and the BBSG. The advantages of the Arwen are that it has a somewhat longer range, and may be more accurate at longer distances. However, the Arwen is larger, heavier and more expensive. Arwen rounds generally carry a higher injury potential than BBSG rounds. In colder climates there may be a concern with Arwen rounds freezing, thereby resulting in increased penetration (more lethal potential).

- The RCMP currently utilizes the BBSG as its extended range impact weapon. PSD will consult further with the RCMP with regard to this recommendation.

Matters Inquest Jury Recommendation #3: A program be developed to effectively train ALL ERT members in the proper use of all less-lethal weapons.

- All ERT members currently have training and certification requirements in the use of less-lethal weapons. The BCPPS require, at a minimum, that conducted energy weapon (CEW) operators are retrained and re-certified in CEWs on an annual basis. The BCPPS also require recertification on all other less-lethal weapons at least every three years. The RCMP exceeds the BCPPS and recertifies BBSG operators on an annual basis.

- It is accepted that an ERT team should have a variety of less-lethal weapons available; however, it may not be necessary or desirable that all members are trained on every weapon. An individual member cannot carry or deploy with every force option.

- PSD is seeking further consultation with the RCMP regarding this recommendation.

Matters Inquest Jury Recommendation #4: A qualified Mental Health Professional be made available (possibly on-call) to all ERT deployment situations, similar to the Vancouver Police Department 'Car 87'.

- In response to Action Item #12 of the British Columbia Policing and Community Safety Plan, PSD is currently working with the Ministry of Health and Health Authorities to provide clear and practical guidance to police and mental health and substance use services on their respective roles and responsibilities when working together to respond to the needs of people with mental health and/or substance use (MHSU) problems who come into contact with police.

- As part of this project, PSD will take this Matters Inquest Jury recommendation under consideration.

Matters Inquest Jury Recommendation #5: Mental Health Training be required for RCMP members and be completed within the first year of active duty. Such a program would include ongoing training and re-qualification.

- The BCPPS currently require all front-line police officers to undertake provincially approved CID, and take refresher training once every three years.

- The provincially approved CID training was rolled out in 2012, and police officers around the province must be trained by January of 2015.

Matters Inquest Jury Recommendation #6: RCMP police dogs be trained and utilized in apprehending armed subjects, and the K9 officers be prepared to deploy their service dogs in such situations.

- PSD is working with police agencies to develop appropriate BCPPS regarding police dogs in British Columbia. The goal is to have effective and accountable dog squads that minimize unnecessary force and injuries.

- It is important to note that police dogs are already currently trained to apprehend subjects, whether or not they are armed. The BCPPS currently under development will include apprehending an aggressive / armed person as part of the mandatory annual certification requirements. However, this has also been the case historically.

- All handlers are aware that ultimately their dog is a policing tool, and that human life is paramount. However, there may be circumstances where serious injury or death to the dog is very likely with no advantage given to the officers. In such a case, a handler is likely to not deploy their dog.

- *Note that Matters Jury Inquest Recommendation #7 concerning the preservation of cell phone data by the RCMP is not within the purview of the province at this time.*

OTHER MINISTRIES IMPACTED/CONSULTED:

- Ministry of Health.

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Approved February 6, 2014 by:
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Assistant Deputy Minister
And Director of Police Services
Policing and Security Branch
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Attachment
Verdict at Inquest

BRITISH COLUMBIA

Ministry of Justice

VERDICT AT INQUEST

File No.: 2012:0607:0096

An Inquest was held at Prince George Courthouse, in the municipality of Prince George

In the Province of British Columbia, on the following dates October 7 - 11, Oct 15-18, 2013 Jan 27-30,2014

before T E Chico Newell, Presiding Coroner,

Into the death of Matters Gregory John 40 ☒ Male ☐ Female
(Last Name, First Name, Middle Name) (Age)

and the following findings were made:

Date and Time of Death: September 10th, 2012 at 19:29

Place of Death: 10680 Pinko Rd, Hydro Pole 29 (Location) Prince George, BC (Municipality/Province)

Medical Cause of Death

(1) Immediate Cause of Death: a) 2 Gunshot wounds to the left posterior chest

DUE TO OR AS A CONSEQUENCE OF

Antecedent Cause if any: b)

DUE TO OR AS A CONSEQUENCE OF

Giving rise to the immediate cause (a) above, stating underlying cause last. c)

(2) Other Significant Conditions Contributing to Death:

Classification of Death: ☐ Accidental ☒ Homicide ☐ Natural ☐ Suicide ☐ Undetermined

The above verdict certified by the Jury on the 30TH day of JANUARY AD, 2014.

T E Chico Newell
Presiding Coroner's Printed Name

Presiding Coroner's Signature

MATTERS	Gregory John
Surname	Given Names

Pursuant to Section 38 of the Coroners Act, the following recommendations are forwarded to the Chief Coroner of the Province of British Columbia for distribution to the appropriate agency:

JURY RECOMMENDATIONS:

To the Minister of Justice and Director of Police Services, Province of British Columbia and the Commanding Officer of the RCMP

1. Audio/Visual Recording device be worn by all ERT members upon deployment.
2. The Arwen Gun be included in the RCMP's less-lethal weapons.
3. A program be developed to effectively train and qualify ALL ERT members in the proper use of all less lethal weapons. This would be completed with a view to ensure that ERT teams have a variety of less-lethal force options. This must include ongoing training and qualification at appropriate intervals.
4. A qualified Mental Health Professional be made available (possibly on-call) to all ERT deployment situations, similar to the Vancouver Police Department 'Car 87'.
5. Mental Health Training be required for RCMP members and be completed within the first year of active duty. Such a program would include ongoing training and re-qualification.
6. RCMP police dogs be trained and utilized in apprehending armed subjects, and the K9 Officers be prepared to deploy their service dog in such situations.
7. RCMP Cell Phones issued and used during a critical incident have all data collected and preserved to assist in a subsequent investigation.

To the Minister of National Defence, Government of Canada and Veterans Affairs

8. Programs be developed to monitor the physical, emotional and financial health and well-being of all members of the Canadian Armed Forces. This would include veterans following their discharge or dismissal.
9. Adequate support and education for Post-Traumatic Stress Disorder (PTSD) be made available to families and loved ones of members and veterans of the Canadian Armed Forces. This could be in the form of a resource package, website, or hotline.

MINISTRY OF JUSTICE
EMERGENCY MANAGEMENT BC
BRIEFING NOTE

PURPOSE: For **INFORMATION** for The Honourable Suzanne Anton QC
Attorney General, Minister of Justice

ISSUE: Escalating issues associated with the ability of local authority fire departments and road rescue groups to replace road rescue vehicles and equipment which directly impacts the provision of road rescue services outside of municipal boundaries across the Province.

SUMMARY:

In the event that road rescue groups are unable to provide road rescue services in the province due to the lack of viable options to fund trucks and equipment, significant stretches of highway will be without these critical services which has a direct impact on the safety of the public travelling on highways in BC.

BACKGROUND:

There is no provincial legislation governing the provision of road rescue services in BC. Road rescue is a discretionary service delivered by a combination of fire departments and volunteer road rescue groups throughout the province. Many local authorities recognize this service as a community investment or civic responsibility and support directly or through mutual aid partnerships. They provide road rescue to neighbouring corridors outside their municipal boundaries because they consider it an extension of their community frequently used by the people who live, work and visit their cities and towns.

There are approximately 50,000 motor vehicle accidents in BC each year. There are approximately 180 road rescue organizations in BC that respond to motor vehicle accidents outside of jurisdictional boundaries. These organizations consist of six search and rescue groups; 13 are road rescue societies, and 160 are fire departments (including career, paid/on call and volunteer departments).

In recent years, there have been a number of issues impacting fire departments and road rescue groups continued provision of road rescue services primarily focused on three areas:

1. Reimbursement rates not adequately compensating for operational costs (i.e. time, fuel, and vehicle equipment wear and tear)
   - ***Provincial Response:*** *Emergency Management BC (EMBC) worked in cooperation with the Fire Chiefs' Association of British Columbia (FCABC) to establish new road rescuer reimbursement rates which were implemented in the fall of 2013.*

2. Inconsistent/unequal policies and reimbursement rates among the service providers despite the provision of the same services
   - ***Provincial Response**: EMBC is in the process of finalizing a revised road rescue policy that will create a more equal playing field for all service providers with an anticipated release date of March 2014.*

3. Lack of capacity to support ongoing vehicle and equipment replacement
   - ***Provincial Response:** EMBC is being approached by fire departments and road rescue groups to help support the costs associated with the replacement of road rescue vehicles and equipment. This issue remains outstanding since the province does not fund response vehicle costs and there is no mandate or budget to lease or purchase this equipment.*

DISCUSSION:

The recent acquisition of a new road rescue truck and equipment through provincial gaming funds in the Town of Golden has set potential precedence for other road rescue groups to seek funding support from the provincial government. This funding opportunity was between provincial gaming and the local society which is linked to the Town of Golden Fire department.

In January, the Town of Revelstoke, whose fire department provided road rescue outside of its jurisdiction irreparably damaged its road rescue vehicle during a response. The Mayor of Revelstoke approached EMBC for support to help identify a new road rescue truck for the provision of critical road rescue services in the area that extends from Malakwa to Rogers Pass. As an exceptional interim measure, EMBC agreed to provide lease payments on an alternate vehicle for up to 3 months to allow the continuation of road rescue services outside of municipal boundaries until Revelstoke can determine a more permanent solution. The term of the lease expires at the end of March 2014.

**Of note, in 2013, the Revelstoke Highway Rescue Society received the provincial Public Safety Lifeline Volunteer (PSLV) award of the year for Road Rescue.*

OTHER MINISTRIES IMPACTED/CONSULTED:

To ensure the sustainability of road rescue services to protect motorists and the public travelling on highways in BC, the following short and mid-term recommendations are suggested:

Short Term – EMBC advise the Mayor of Revelstoke to follow up on the following sources to identify a replacement road rescue truck by exploring the following:

s.13

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Mid Term – Recognizing the level of urgency and importance associated with this issue, engage broader stakeholders inclusive of the Insurance Corporation of British Columbia (ICBC), the Office of the Superintendent of Motor Vehicles (OSMV), the FCABC and the British Columbia Search and Rescue Association (BCSARA) to identify strategic governance and funding mechanisms to help sustain road rescue services in BC.

s.13

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MINISTRY OF JUSTICE
POLICING AND SECURITY BRANCH
BRIEFING NOTE

PURPOSE: For INFORMATION for the Honourable Suzanne Anton QC, Attorney General and Minister of Justice

ISSUE: Proposed actions to address public concerns about alcohol consumption in "party buses" and limousines for discussion at a meeting February 17, 2014, between Minister Anton and Minister of Transportation and Infrastructure Todd Stone.

SUMMARY:

- Public concern about safety, including alcohol consumption in party buses and limousines, has been brought to the attention of the Ministry of Transportation and Infrastructure (MoTI). Underage drinking is also alleged to be a frequent practice in these vehicles, especially during spring graduation season.

- The *Passenger Transportation Act* establishes the licensing framework for transportation services and regulates licensees; it doesn't regulate the conduct of passengers in vehicles.

- Police are aware of the issues and concerns regarding these vehicles and agree that an integrated enforcement approach, involving police, Commercial Vehicle Safety Enforcement (CVSE) to address structural integrity issues and the Passenger Transportation Branch (PTB) to ensure effective regulation of licensees, is the most viable and immediate option to address illegal behaviours and sanction those found to be promoting or participating in these activities.

- The Ministries of Justice, and Transportation and Infrastructure should work together with road safety partners to: promote public and fleet awareness that it is illegal to consume alcohol in a vehicle; and support police and enforcement agencies in their efforts to curb the illegal consumption of liquor in vehicles.

BACKGROUND:

- Commercial passenger vehicles, known as party buses, operate under the authority of a general authorization passenger transportation licence – there is no category of passenger transportation licensing that refers specifically to party buses. General authorization licence holders can provide charter services using vehicles with a seating capacity of 12 or more passengers plus the driver.

- The buses and limousines are rented to provide services in accordance with a rental agreement with the company, which generally reflect provincial laws by specifying that alcohol is prohibited in the vehicles. Passengers are responsible for adhering to the terms and conditions of the agreement.

- Party bus is an industry created term. These vehicles are in the general passenger vehicle category of licensing along with tour buses, charter buses and sightseeing buses.

- On November 9, 2013, a 17 year old girl was among a group of underage people drinking in a party bus. She alleges she was assaulted by a passenger and then left in a parking lot by the vehicle driver. This latest incident follows two incidents last year, when one youth died after being removed from a party bus where alcohol was found (a Coroner's report found that drugs or alcohol were not a factor in the youth's death), and another incident when a youth was taken to hospital after being found heavily intoxicated on a party bus.

- There are approximately 36 party buses operating in the lower mainland. On March 21, 2013, PTB met with licensees to clarify their responsibilities and emphasize that under no circumstances can liquor form part of their services. Offences include:
  - Consuming alcohol in a public place, including commercial vehicles;
  - Operating a motor vehicle while there is liquor in the motor vehicle; and
  - Permitting a minor to consume liquor in a place under his/her control.

- The PTB has reviewed various companies' rental agreements, noting policies relating to chaperoning minors, open liquor in vehicles, etc. The companies generally reflect provincial laws by specifying that alcohol is prohibited in the vehicles and that illegal consumption of alcohol and/or use of narcotics in or around the vehicle are prohibited.

- MoTI has no authority to search for and/or seize alcohol found on board passenger transportation licensed vehicles, and has no authority to fine anyone contravening provincial liquor laws.

- Ontario and Alberta have licensing schemes that enable drivers and the fleet owners to obtain special permits to allow liquor on a case by case basis, much like special occasion permits in BC. There were no recommendations associated with this issue coming from the recently completed review of liquor licensing in BC.

- Liquor laws are the responsibility of the Ministry of Justice, and are enforced by local law enforcement.

- At a meeting of the BC Association of Chiefs of Police Traffic Safety Committee held February 11, 2014, road safety partners, including representatives of police and CVSE, agreed that an integrated approach, including focussed police

  enforcement for driving infractions and liquor violations, combined with CVSE for structural integrity, and the PTB for regulatory and licensing issues, is the most viable and immediate option of identifying and addressing illegal behaviours.

OTHER MINISTRIES IMPACTED/CONSULTED:

- Ministry of Transportation and Infrastructure, municipal governments and police.

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Approved February 14, 2014 by:
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Pages 14 through 16 redacted for the following reasons:
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s.12, s.17

MINISTRY OF JUSTICE
LIQUOR DISTRIBUTION BRANCH
BRIEFING NOTE

PURPOSE: For INFORMATION for the Honourable Suzanne Anton
Attorney General and Minister of Justice

ISSUE: Status of Bounty Cellars Winery (Bounty)

SUMMARY:

- Bounty is a winery in the Okanagan Valley. On January 8, 2014, the BC Liquor Distribution (LDB) suspended its commercial winery agreement with Bounty due to non-compliance with payment and reporting obligations.
- The LDB recently learned that the Canada Revenue Agency (CRA) has seized Bounty's assets and it appears Bounty is going into receivership.

BACKGROUND:

- Since commencing its business in 2005, Bounty has repeatedly failed to comply with the LDB's reporting requirements and has failed to remit the sale proceeds due and owing pursuant to its commercial winery agreement with the LDB.
- The LDB first suspended its agreement with Bounty in 2009. In 2010, the LDB recovered the amounts owing and reinstated the agreement. However, Bounty again stopped making regular revenue deposits.
- In August 2013, Bounty and the LDB agreed to a remediation plan to bring Bounty inline with its obligations, but Bounty failed to comply with that remediation plan.
- As of January 8, 2014, when the LDB most recently suspended its commercial winery agreement with Bounty, Bounty owed the LDB over $470,000. While Bounty's agreement with the LDB is suspended, Bounty is not permitted to sell its liquor products.
- The LDB subsequently referred this matter to the BC Government's debt collection agency, but no substantive steps to collect have yet been taken.
- On February 7, 2014, the Liquor Control and Licensing Branch (LCLB) issued a notice of suspension of Bounty's winery licence, s.21, s.17 s.21 The LCLB gave Bounty until February 24, 2014 to provide notice of a reason why its license should not be suspended. If Bounty's winery licence is suspended, Bounty would not be able to manufacture, sell or promote any of its product.
- s.21

- On February 19, 2014, the LDB received notice from legal counsel for Bounty advising of Bounty's intention to make an assignment pursuant to the *Bankruptcy and Insolvency Act* (Canada).
- Should these recent events involving Bounty become public, factual issues may be raised regarding the role of the LDB and/or LCLB in putting Bounty into receivership, and concern may be raised about the sustainability of the BC wine industry.

OTHER MINISTRIES IMPACTED/CONSULTED:

- LCLB

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Pages 19 through 63 redacted for the following reasons:
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s.13
s.3

10. EARLY CASE RESOLUTION

Encouraging early principled resolution of criminal cases—the subject of almost every recent commentary on the criminal justice system—has long been a goal of administrators, policy makers and judges. There are two components of this goal: timeliness and principled resolution.

The most significant recent initiative to encourage early resolution in criminal matters was the development and implementation of the CCFM rules in 1999.[171] As discussed in greater detail in the Annex, the central features of the CCFM rules are the development of an arraignment court to encourage early resolution and a trial readiness hearing to increase the likelihood that trials will proceed and not collapse on the first day of hearing. Both were intended to encourage prosecutors and defence to assess their case, and for the accused to have an offer in relation to a sentence that is realistic and attractive compared to the likely sentence after trial. This initiative is widely acknowledged to have failed to produce earlier resolutions and to have perhaps made the system less efficient by adding appearances in every case.

10.1 CONTEXT

The majority of all criminal cases in Provincial Court are resolved in just over three months of the first appearance. Only 16% of cases are actually set for trial, and only 4.5% of cases have even a single trial appearance. Of that appearance, 30% of the 4.5% actually proceed to trial. About 40% of accused plead guilty at that time. The remainder are stayed or, in a relatively small number of cases, are adjourned to another date. In a few cases a bench warrant for the arrest of the accused is issued for failing to attend.[172]

Broadly speaking, there appears to be an initial period in which many cases are resolved. Then, in a substantial number of cases there is a period that may span many months before the matter is resolved or a trial date is set. Even when a trial date is set, a further 11% of cases still settle without actually having a trial appearance, and approximately 70% of the few remaining cases then resolve on the date of trial.

Although the high resolution rate is well known and reported on, the resolution rate and timing of resolution for different categories of offences and by region may vary. There is no easily available data that segregates patterns of resolution by category of case, court location or other variables such as individual prosecutor.

As discussed earlier, the prosecution service is responsible for approving charges in British Columbia. There is a single standard for written RCCs, irrespective of the nature or type of alleged offence. This standard is that there should be a substantial likelihood of conviction and that prosecution is in the public interest. It requires full disclosure of the facts and evidence sufficient to support the laying of criminal charges and must meet the criminal standard of proof beyond a reasonable doubt. There will be a substantial likelihood of conviction where there is a strong, solid case of substance to present to the court.[173]

171 For further information, see: Associate Chief Judge Anthony J. Spence, Provincial Court of British Columbia, *Report to the Chief Judge on Criminal Caseflow Management Rules* (April 2002), online: Provincial Court of British Columbia <http://www.provincialcourt.bc.ca/types-of-cases/criminal-and-youth/report-on-caseflow>.

172 This is described in greater detail above in Section 3.

173 British Columbia Ministry of Attorney General, Criminal Justice Branch, *Charge Assessment Guidelines*, CHA 1 (2 October 2009), at p. 1, online: Ministry of Justice <http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CHA1-ChargeAssessmentGuidelines-2Oct2009.pdf>.

Only in exceptional cases is it contemplated that charges may be laid where the standard evidentiary test has not been met. In these exceptional cases, the standard is a reasonable prospect of conviction.[174]

Presently, the Charge Assessment Guidelines mandate that the basic requirements for every RCC are as follows:

> 1. A comprehensive description of the evidence supporting each element of the suggested charge(s);
> 2. Where the evidence of a civilian witness is necessary to prove an essential element of the charge (except for minor offences), a copy of that person's written statement;
> 3. Necessary evidence check sheets;
> 4. Copies of all documents required to prove the charge(s);
> 5. A detailed summary or written copy of the accused's statement(s), if any;
> 6. The accused's criminal record, if any; and
> 7. An indexed and organized report for complex cases.[175]

While Gary McCuaig, QC, has recommended in his report that responsibility for charge approval remain with the prosecution service, he has also recommended that an abbreviated RCC be considered in specified circumstances.[176]

Existing Crown counsel policy requires that a prosecutor is to explore resolution only after being satisfied that the charge approval standard has been met. This is a continuing responsibility which applies to the consideration of alternative measures and to accepting a plea of guilty. If for any reason the prosecution forms the view that the case no longer meets the charge approval standard, the appropriate response is to enter a stay of proceedings rather than negotiate a guilty plea with a reduced sentence.[177] This departs from the approach taken in television crime shows but assures Canadians that prosecutors approach each case with an individualized concern that persons not face charges that cannot be proven to the criminal standard.

10.2 CONSULTATIONS

Although the majority of all cases in the Provincial Court are resolved without a trial appearance even being scheduled, these resolutions may take many months to achieve. There was widespread agreement throughout the consultations that there are insufficient incentives to encourage early, principled resolutions.

Thinking within the community has also undergone dramatic change with the consideration of a redesign of Provincial Court criminal process and scheduling. This initiative will place more clear responsibility on the parties to obtain resolutions in the initial phase of a case. One possible lesson of the past decade may well be judicial involvement in this resolution phase should be reserved to adjudicating disputes and reserving case management to particular cases and only if a matter has had a clear opportunity to resolve.

The prosecution service has determined that to facilitate early resolutions and other management improvements, transition to a file ownership system will be made.

It was also suggested that late resolutions appear to be clustered around impaired driving and domestic violence cases. The Kelowna Domestic Violence Project suggests that this may be due to accused in both cases hoping that the delay in the system rebounds to their advantage, the case against them becoming unprovable. It was also suggested that the current system failed to incentivize prosecutors

174 British Columbia Ministry of Attorney General, Criminal Justice Branch, *Charge Assessment Guidelines*, CHA 1 (2 October 2009), at p. 1, online: Ministry of Justice <http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CHA1-ChargeAssessmentGuidelines-2Oct2009.pdf>.
175 British Columbia Ministry of Attorney General, Criminal Justice Branch, *Charge Assessment Guidelines*, CHA 1 (2 October 2009), at p. 6, online: Ministry of Justice <http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CHA1-ChargeAssessmentGuidelines-2Oct2009.pdf>.
176 See Schedule 11.
177 British Columbia Ministry of Attorney General, Criminal Justice Branch, *Charge Assessment Guidelines*, CHA 1 (2 October 2009), at p. 3, online: Ministry of Justice <http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CHA1-ChargeAssessmentGuidelines-2Oct2009.pdf>.

to seriously assess the likelihood of conviction in cases set for trial at an earlier point, rather than waiting until the last minute.

It was observed that administration of justice offences rarely interfere with resolution of the underlying offense. They are often settled by way of stay or other similar agreement as part of the resolution of the underlying offence. administration of justice offences are often resolved summarily but rarely occupy much trial time on their own.

The interplay of mental health and addiction issues with socially disruptive behaviour and demands on police has now become widely understood. Police leadership has expressed a strong preference for managing people dealing with mental illness or addictions through means other than enforcement.

Early resolution for these people frequently involves the offender accessing health or social programs. Virtually all of these programs are provided by organizations outside the Ministry of Justice and are provided by, or funded by, health authorities. Programs and services include both residential and day programs, as well as integrated supervision teams that aim to keep individuals with mental illness and substance abuse problems stable in the community.

Defence counsel report that the willingness of prosecutors to seek alternate measures varies dramatically from prosecutor to prosecutor. Prosecution service leadership reaffirmed the policy commitment to seeking alternate measures where appropriate. This appears to be an issue of persuading individual prosecutors of the soundness of this approach.

Finally, restorative justice advocates strongly argue that the system as a whole has to enable victims and offenders to access restorative justice programs for more serious cases and to liberate restorative justice from the perception that it is only appropriate in extremely minor offences such as shoplifting.

10.2.1 Police/Prosecution Interface

During consultations, many police officers expressed considerable frustration with the existing charge approval system, and this frustration no doubt underlay the request to Gary McCuaig, QC, to review the charge approval system generally. I agree with Gary McCuaig, QC, that the suggestion that charge approval be permitted by police officers is a proxy for other frustrations with their relationship to the Crown.

In the consultations, it became apparent that most police officers would not wish to have the authority to charge individuals, particularly in light of the very high rate of stays of proceedings experienced in those jurisdictions, such as Ontario where the charging authority rests with police officers.

Put simply, there appears to be no system efficiencies or clarity gained by authorizing police officers to lay charges. The better approach would appear to be to identify and address the underlying sources of frustration with the current system.

During consultations, these other frustrations were expressed in a variety of ways, including:

- The sense that all RCCs must be perfect before they are considered by Crown counsel, even in cases where resolution can be predicted. An extreme and unusual but often cited example would be an accused who is aware of the investigation, acknowledges responsibility, and offers to plead guilty but must await the completion of a RCC and the consideration of charges by Crown counsel before having that request resolved;
- Frustration with perceived low charge approval rates, particularly in complex investigations;
- Frustration with the absence of consultation around stays of proceedings being entered, particularly where there is a perception that the prosecution was forced to choose between cases;
- Perceived low charge approval rates for minor offences and administration of justice offences; and
- The general sense that the prosecution's sense of independence interferes with joint strategic direction.

The prosecution service for its part acknowledges and accepts its constitutional independence from the police investigative function. This will of necessity create tensions in the relationship from time to time.

The prosecution service would maintain that:

- Crown counsel must exercise the core of prosecutorial discretion whether to charge an individual on an individualized basis and must similarly make decisions as to resolution on an individual basis.
- Efforts to provide advice during a course of investigations to improve the quality of the RCC and the likelihood of meeting the charge approval standard have improved in recent years, particularly with respect to complex investigations where dedicated Crown have provided ongoing and strategic advice with respect to the investigation.
- It is a prosecutor's duty to disappoint the police from time to time where a case is no longer viable, notwithstanding the police view that the accused is a person who represents a risk to the community or that the category of offence is particularly important.

Both prosecutors and police reported that excellent working relationships existed between the leaders at the Crown/Police Liaison Committee, and there was substantial progress towards addressing friction in the broader relationships in the justice community.

It is also clear from consultations that many of the frictions likely to arise can be reduced through effective and ongoing communication between prosecutors and police.

In considering the data available from the system, the frequently expressed observation that there is a low approval rate for administration of justice offences does not seem borne out by the evidence. It may rather be a frustration rooted in the common bundling of these offences with the underlying substantive offence in a common sentencing submission to the Court. Police officers are frustrated that respect for the law appears to be trivialized in the system's treatment of these offences.

10.2.2 Supervision

Corrections must of course supervise persons in the community who are subject to court orders as part of the terms of their release by the police or the court or as a term of their probation.

The Corrections Branch, during consultations, raised the suggestion that evidence-based information on risk assessment is currently under-utilized by the other justice participants. They have proposed that information related to the theory and application of evidence-based risk assessment be made more readily available and that it would assist among other things in better informed terms of release and sentences.

10.3 ANALYSIS AND RECOMMENDATIONS

Our current system tends to organize itself around the timing of trials, and yet we know that in fact over 84% of cases are resolved without a trial date being scheduled and 98% are resolved without trial.[178] Resolutions can occur at any time in the process, up to and including the first day to trial, with the existing processes to support early resolution appearing less effective than needed.

Some of this is in the execution of what is otherwise sound policy. It seems clear that providing early sentencing positions that are reasonable does indeed enhance resolution rates. There is general agreement that the absence of file ownership means that prosecutors do not have to account for the sentencing positions they take earlier in the course of the case. Similarly, there is widespread agreement that despite jurisprudence that supports the imposition of stiffer penalties where an accused unreasonably delays pleading guilty, judges are rarely seen as discouraging later pleas.

Delay in reaching early resolutions can be attributed to a variety of causes, including:

- No process to encourage resolution before the first court appearance of those who are given a

178 This is described in greater detail above in Section 3.

notice to appear in court by the police, currently about six to eight weeks after the alleged commission of the offence;
- Lack of file ownership by the prosecutor, so he or she may not be ready to engage in early discussions leading to resolution;
- Delay in accused retaining counsel or getting access to duty counsel, so the accused may not be ready to enter into resolution discussions;
- Lack of incentives for early resolution;
- Disincentives to early resolution, including defence recognition that the prosecution's case will often deteriorate over time;
- No clear timelines for completion of discussions regarding resolution; and
- Trial dates which are sufficiently far in the future to increase uncertainty about the viability of prosecution on that date.

The challenge in this area is to learn from past efforts and put in place changes that will encourage principled early resolution, preferably before a trial date is set.

In my view, the central elements that are required in order for this to be accomplished are
- Multi-sectoral recognition that the vast majority of cases can, should and will be resolved rather than tried;
- Aligning the investigation and charge approval process in such fashion as to encourage exploration of resolution with the accused at the earliest possible date;
- Timely disclosure of the prosecution's case to enable defence counsel to professionally and properly advise the accused on resolution;
- Developing court scheduling methods to support and encourage resolution and to provide principled, predictable and clear incentives which favour resolution; and,
- More effective use of the risk assessment skills within Corrections to identify and inform proposals for resolution.

It is apparent that the professionals engaged in the system recognize that incentives must be in place to encourage an individual suspected of an offence to take accountability for his or her actions and to seek reconciliation with the victim and the community. The defence counsel in this context are serving their client's interest in a system in which delay may interfere with the prosecution's proof of the case in a host of ways. Defence counsel readily acknowledge that there would be a higher percentage of resolutions if early predictable trial dates were generally applied and if appropriate incentives existed to encourage and inform the accused to instruct his counsel to seek resolution.

During the consultations, it was reluctantly agreed that the incentives intended to be put in place by the CCFM rules simply did not materialize. The hope then was that the prosecutors would offer a sentencing position which would not be improved if it was declined by the accused and the case then proceeded to trial. To the contrary, the case docket has become so dependent on last minute resolutions that both prosecutors and judges appear relieved when an accused pleads guilty on the first day of trial, and they are reluctant to carry through on the assurance that the initial sentencing position was the best on offer. Indeed, defence counsel routinely observed that in most cases they were highly confident that the sentence available on the first day of trial would be less severe than that made available on the initial sentencing position, at arraignment or at the trial readiness hearing. This is compounded by the obvious risks that prosecution's witnesses may not appear at trial or other gaps in the prosecution appear and require a stay of proceedings.

Prosecutors are reluctant to accept abbreviated RCCs for a number of reasons, including:
- A reasonable concern that once the case is cleared by charge under the police system, it is difficult to secure follow-up investigative efforts if the case is not resolved.
- The cases of individuals willing to plead in the absence of a full investigation and charge approval consideration are rare, and no guilty plea should be accepted unless the charge or charges would have been well founded.

- There is a reasonable concern that, unless there is full disclosure of the investigation at the outset, unnecessary defences may arise respecting disclosure, and incomplete disclosure will prevent defence counsel from knowing enough to fully advise their clients as to resolution.

10.3.1 Early Resolution

The proposals for enhancing early resolution made by the prosecution service, Legal Services Society (LSS) and the Provincial Court build on current practices and redirect the focus away from court-based process. To a substantial degree the means by which this is enabled—through changes in the prosecution service management systems, changes to legal aid and by the defence bar—have not been identified and need to be developed by those stakeholders working co-operatively. There is little that I can add to the task they have already set for themselves. I do think, however, that one opportunity for improvement in this area arises from the consultations that deserves brief mention: expanding the use of pre-charge resolution.

10.3.2 Pre-Charge Resolution Process

The current period of time between the commission of an offence and the expected first appearance in court, usually six to eight weeks, opens opportunities for creative approaches to early resolution that have not been fully utilized. The suggestion that the Court should rely on the parties to seek resolution outside of court in the majority of cases raises the question of whether resolution can and should take place before charges are approved in a substantial number of cases. While I am advised that this indeed happens now in some cases, I believe that its significant expansion is worth consideration.

During consultations police urged greater flexibility and co-operation respecting the disposition of cases; this can be most easily done before the charge approval process is completed. Similarly difficulties around the completeness of an investigation and/or the completeness of an RCC for the purpose of laying a charge can be dealt with more flexibly if the individual and counsel are involved in resolution discussions from the outset.

There are potentially many advantages to enhancing this process. It would encourage joint consideration by police and prosecutors to seek appropriate alternatives to enforcement. It would open opportunities for defence counsel to advance their clients' interests before positions have hardened in the prosecution service. In effect it would create a resolution phase that would operate before the "pre-trial" phase of proceedings before the courts.

Finally, such a process would need to provide for transparency in results and reporting to the public.

Recommendation: A new approach to pre-charge resolution should be taken that maximizes the opportunity to resolve matters before formal charge approval is complete.

10.3.3 Early Resolution and an Abbreviated RCC

Various police representatives proposed that an abbreviated RCC be made available in appropriate circumstances. That proposal has been endorsed for serious consideration by Gary McCuaig, QC, and I add my endorsement of this proposal with some comments and concerns.

The duty not to approve charges against persons who could not be proven guilty is a solemn duty. Though it is important to respect the rule of law, it is nevertheless obvious that the current system fails in several respects, and one of these is its failure to systematically pursue early resolutions.

As I understand the possible approach, it would, in appropriate cases, involve delivery of an abbreviated RCC to the prosecution service, with the intent that sufficient evidence would be gathered to meet the charge approval standard and make resolution clearly attractive to the potential accused.

The concern raised by prosecutors is that in their experience police members place a great deal of administrative importance on a file having been

"cleared by charge," and that obtaining follow-up investigative work after charge approval to ensure a trial-ready brief is regularly difficult.

Success with this approach depends heavily on police investigators remaining available and properly motivated when resolution is not reached. The file must also be made trial ready. I am confident that could be achieved if the police saw a more rational upfront approach to resolution by the others in the system.

This is an area already identified for reform by the prosecution service, and several of its projects are aimed at enhancing this important means of resolving cases. The significant changes implied in the revised court process means that substantial work needs to be undertaken by the prosecution service. I have little substantively to offer, apart from these brief observations to this important work.

Similarly, it is important that LSS ensure its policies support such an initiative and provide appropriate support for people who would benefit from early advice.

Recommendation: An abbreviated report to Crown counsel form should be considered for appropriate cases by the Police/Prosecution Liaison Committee in consultation with Legal Services Society and the defence bar.

10.3.4 Crown File Ownership

The prosecution service has decided to seek to reform its assignment methods so as to have individual prosecutors responsible for a case from beginning to end, or at least for a larger portion of the management of the file—colloquially known as file ownership. It is expected that file ownership will provide the right type of incentives to prosecutors to seek resolution of what is now "their case," and that continuity will assist in relationship with police, witnesses, victims, defence counsel and the community. Put simply, the prosecution service will have identified a person responsible for that case.

The significance of this administrative change should not be understated. I commend the leadership of the prosecution service for being willing to undertake such a major administrative change in its work for the public good. During consultations, I heard very little dissent from this proposal, which I believe reflects the conclusion that the professional community as a whole recognizes that, in order for the prosecution service to improve its performance, this change is necessary.

Recommendation: The prosecution service should adopt file ownership as the default administrative process for the handling of criminal matters.

10.3.5 Expanded Role for Duty Counsel or Other Forms of Early Advice

To expand the effectiveness of early resolution procedures including the use of pre-charge resolution, accused people need to know how to get early access to legal advice. Early principled resolution is best achieved when an accused has an opportunity to obtain legal advice that is proportional and timely but above all delivered in his or her own interest.

The LSS has proposed an expanded model of service to facilitate early resolution. In particular, they have suggested that they could change the model of how duty counsel services are currently provided, so that duty counsel would be assigned to the same court on a continuing basis. This would permit them to retain conduct of matters that can be resolved in a reasonable period of time. This would also avoid the current situation where an accused person might have to speak to a number of different lawyers prior to the resolution of their matter.

LSS has also proposed changes to the legal aid tariff to facilitate the availability of legal assistance in disposition courts.

As well, to advise an accused as to the charges and their best options for resolving or obtaining counsel for the case, it would be beneficial if advice services could be funded, which would be available very early in the process (i.e., pre-charge).

With respect to pre-charge resolution, as noted above, it is critical that there be early access to legal advice. This should begin with police giving people information about how to access legal advice at the same time that they give them their notice to appear in court.

Consideration should be given to how best provide early access to legal advice, but it seems to me that this might be achieved most cost-effectively if some form of centralized telephone advice were implemented. Those providing the advice would need to be able to get information from the prosecution service about the potential charge, as well as the police report. This would be a good opportunity to explore the potential of internet transfer of key information from the prosecution service to duty counsel and the private bar, to facilitate the provision of early, informed advice at the pre-charge stage.

Recommendation: The Legal Services Society should be supported to provide legal services to promote early resolution by

- **Assigning duty counsel to the same court on a continuing basis;**
- **Changing the legal aid tariff to facilitate legal assistance in disposition courts; and**
- **Providing advice and other services pre-charge to facilitate resolution at that point.**

Recommendation: Police should advise all persons who are given a notice to appear in court on a future date of the possible availability of legal assistance and how to access it.

Pages 72 through 77 redacted for the following reasons:
- -
s.14, s.16

Cliff: 406861
Date Prepared: February 17, 2014
Date Decision Required: February 28, 2014

MINISTRY OF JUSTICE
JUSTICE SERVICES BRANCH
BRIEFING NOTE

PURPOSE: For DECISION by Suzanne Anton, QC, Attorney General and Minister of Justice.

ISSUE: Public release of the final evaluation of the Downtown Community Court (DCC) in Vancouver.

DECISION REQUIRED/ RECOMMENDATION:

1. Proceed with the public release of the final evaluation of the DCC on March 5, 2013.
2. Provide embargoed copies of all the studies and reports comprising the final evaluation to the following recipients one day in advance of the release:
    - DCC Executive Board – a key governing body for research and evaluation, with representatives of the Ministry Executive, Office of the Chief Judge and Vancouver Coastal Health
    - DCC Steering Committee – includes representatives of the DCC stakeholders
    - Researcher leads who authored the reports comprising the final evaluation
    - Interested media members

SUMMARY:

- The final evaluation of the DCC was completed in the fall of 2013, and addresses the court's efficiency, community engagement and impact on offender outcomes, specifically, changes in recidivism.

- The final evaluation is planned to be made public on March 5, 2013. This date corresponds to the scheduled publication of the recidivism study in a journal of science. The DCC recidivism assessment will be the first community court study to undergo a peer review – a particularly important step in reinforcing the quality of the evaluation.

- Many British Columbia communities are looking at the community court model and its principles as a potential approach to their crime problems. Government has deferred decisions about adopting a community court model in other locations and about the future of the DCC until the results and lessons learned from the DCC are available to inform these decisions.

- The final evaluation results of the DCC pilot are as follows:
    - The court is not more efficient than traditional courts in British Columbia.
    - The court shows promising results in reducing recidivism among a subset of offenders – those with high needs for health and social services and history of criminal offences.
    - The court collaborates with many government and community service providers, the business community, residents in the area and others.

- The Provincial Court Judiciary disagrees with the conclusion of the efficiency analysis. The Court believes that additional research could explore all aspects of the DCC's impacts and benefits.

- The ministry and its partners are reviewing the research. From a public policy perspective, it would be important to determine what specific elements the DCC model contribute to the outcome of reduced recidivism, if this extends to other offenders in the DCC, whether the program is cost-effective, and to consider the return on the investment in the DCC.

- The ministry is working on a broader strategy for specialized courts in the province. The strategy will establish a structured approach for specialized courts that is rooted in validated research, is fiscally responsible and engages justice stakeholders, the judiciary and, as appropriate, others outside the justice system. This will help to ensure that finite resources are used to advance truly effective justice solutions.

BACKGROUND:

- The DCC pilot project was established in 2008 to test new approaches to: be more efficient than traditional courts; produce better outcomes for offenders, including reduced recidivism; and to engage with the community it serves.

- The DCC is an intake court for a designated area in downtown Vancouver. All offenders with summary conviction offences from the area come to the DCC – approximately 2,500 offenders per year with over 4,000 court cases. A small portion of offenders in the DCC are managed in an integrated manner by a Case Management Team. The objective with the majority of offenders is to process their cases more efficiently.

<u>Results of the DCC evaluation</u>

- The offender outcome evaluation by Dr. Julian Somers at Simon Fraser University (SFU), Faculty of Health Sciences demonstrates that the DCC was more successful in reducing recidivism than the regular offender management model. The study focused on the subgroup of offenders managed by the DCC's integrated Case Management Team (CMT), who had high needs for health and social services and a history of frequent offending. The study involved 250 offenders in the DCC.

- The efficiency evaluation indicates that the DCC did not impact efficiencies. Improvements were observed but they were part of long-term trends resulting from factors other than the implementation of the DCC. The efficiency analysis was completed by the ministry, with advice from the key stakeholders, and confirmed by an independent expert – R.A. Malatest & Associates Ltd.

- A series of survey reports were completed by a team of researchers led by Drs William Glackman and Margaret Jackson from SFU, School of Criminology. These inform about the court's engagement with the community. The DCC established collaborative relationships with many government and community service providers, the business

community, residents in the area and others, and have been a catalyst for community services and programs.

Provincial Court Judiciary not supportive of efficiency conclusions

- The Judiciary disagrees with the efficiency report's conclusion that none of the observed efficiency gains are attributable to the operation of the DCC. The Provincial Court is of the view that this conclusion is erroneous and is attributable to limitations on time, data and methodology devoted and applied to the efficiency analysis.

- The Court believes that additional research could be undertaken to explore all aspects of the DCC's impacts and resulting benefits and further, that the process of governance in matters of collaborative projects and their goals, design, implementation and evaluation would similarly benefit from a comprehensive review.

Need for additional research

- The results of the recidivism study are promising but many questions about the effectiveness and cost-benefits of the CMT and the DCC remain. Further research would greatly enhance the understanding of the DCC's impacts and how specialized courts compare to other justice solutions, especially given the interest in specialized courts in this province and the promise they offer. The DCC offers a unique opportunity for continued learning.

- The DCC model is one of several currently in place in the province that vary in investment requirements; others include the Drug Treatment Court, Victoria Integrated Court and various domestic violence and First Nations courts. Valuable lessons could be learned through broader research, including comparative studies, into which specialized court approaches are most successful and cost-effective and for which populations.

Specialized courts strategy

- The ministry is working on a broader strategy for specialized courts in the province. The strategic approach will be informed by lessons learned from and the results of the final evaluation of the Downtown Community Court in Vancouver and from other specialized court models.

- The strategy will establish a structured approach for specialized courts that is rooted in validated research, is fiscally responsible and engages justice stakeholders, the judiciary and, as appropriate, others outside the justice system.

- The strategy will help ensure that there is a consistent and effective approach to establishing specialized courts in British Columbia, and ultimately, lead to better outcomes from specialized courts.

s.12

s.12

s.17

Cost of the DCC final evaluation

- Costs of the studies are as follows:
  - Offender outcome evaluation s.17
  - R.A. Malatest & Associates Ltd review of the efficiency evaluation
  - Overall evaluation design and community engagement research - s.17 over six years.

OTHER MINISTRIES IMPACTED/CONSULTED:

- The ministry will collaborate with DCC stakeholders and the judiciary about the public release of the final evaluation and any next steps.

DECISION APPROVED / NOT APPROVED **DATE:**

Anton — 26 Feb 2014.

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