

**MINISTRY OF JUSTICE
JUSTICE SERVICES BRANCH
BRIEFING NOTE**

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

ISSUE: In November, a delegation from the Singapore State Courts will visit BC to study the Civil Resolution Tribunal – Tribunal Transformation Initiative (CRT-TTI).

SUMMARY:

- The delegation consists of the Presiding Judge of the State Courts, Judicial Commissioner See Kee Oon, District Judge Soh Tze Bian, District Judge Ow Yong Tuck Leong, and Edith Tan, Assistant Director from Singapore's Community Justice and Tribunals Division. (See Appendix A for details.)
- The visit runs from November 28th to December 2nd. (See Appendices B and C for details.) The AG would be very welcome to participate at any point.

BACKGROUND:

- The purpose of the study visit is for the Singapore delegation to learn how CRT-TTI is transforming BC's administrative justice and court systems.
- Singapore's State Courts are reviewing how tribunals might be developed and supported in Singapore. The Dispute Resolution Office will provide an overview of the Tribunal Transformation Initiative, information on the legislative amendments and change management associated with the implementation of online systems, as well as information on how tribunals and the DRO work together to address policy, implementation and operational challenges.
- The delegation has asked for briefings on how the Civil Resolution Tribunal works, both in terms of operations and technology. Shannon Salter and Richard Rogers will provide a demonstration of the Solution Explorer's guided pathways, CRT online intake, the Dispute Resolution Suite case management system, the CRT's processes and timelines associated with each stage, the CRT-TT fee structure, and an update on the CRT since its launch in July.
- Meetings have also been arranged with Chief Judge Crabtree of BC Provincial Court, other representatives of the Small Claims Court, Community Court, the Employment Standards Branch, and the tribunal community. Again, topics include resolution processes, operational issues and policy context.
- In Victoria, the Singapore delegation will provide a "lessons learned" session related to Singapore's Online Dispute Resolution processes, "Primary Justice Project", "Friends of Litigants in Person" program, and Neutral Evaluation process. A summary of lessons learned will be sent to the AG.

NEXT STEP:

- If the AG is interested in meeting the delegation, the program set out in the attachment can easily be changed to accommodate her schedule.

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Date: October 27, 2016

Attachment(s)

Appendix A – Biographies for Delegates from Singapore
Appendix B – Study Visit Schedule (Vancouver and Victoria)
Appendix C – Agenda for Visit in Victoria

Appendix A – Biographies for Delegates from Singapore

Judicial Commissioner See Kee Oon joined the Singapore Legal Service as a Deputy Registrar and Magistrate in the Subordinate Courts (renamed as the State Courts in March 2014) after graduating from the National University of Singapore in 1991. In 1994, he obtained his LLM with First Class Honours from Cambridge University and thereafter served as a Justices' Law Clerk in the Supreme Court from 1995. He returned to the Subordinate Courts in 1997 and heard a variety of cases in the criminal, civil and family courts as a District Judge. He subsequently headed the Insolvency and Public Trustee's Office from June 2007 to November 2009. In November 2009, he was reappointed as a District Judge and appointed Chief District Judge in 2013. In April 2014, he was appointed Judicial Commissioner and concurrently appointed the Presiding Judge of the State Courts. He also holds a Masters' degree in Public Management from the Lee Kuan Yew School of Public Policy, National University of Singapore.

Ow Yong Tuck Leong is a District Judge in the Community Justice and Tribunals Division of the State Courts. Mr Ow Yong graduated from the National University of Singapore in 1998 and was admitted as an advocate and solicitor of the Supreme Court in 1999. He joined the Singapore Legal Service in 2000 and has served in the Registry of Companies and Businesses, the Attorney-General's Chamber and the Competition Commission of Singapore before his appointment in the State Courts in 2011.

Soh Tze Bian is the Group Manager and District Judge in the State Courts Community Justice and Tribunals Division, Singapore where he assists the Principal District Judge in managing a team of judges and the registry staff and deals with tribunal or civil cases on matters arising from legislation such as the *Community Disputes Resolution Act*, the *Small Claims Tribunals Act* and the *Protection from Harassment Act*, as well as criminal cases from other penal legislation.

Prior to becoming a District Judge in 2008, he was a Senior State Counsel in the Attorney-General's Chambers of Singapore where he had handled many court cases covering a broad spectrum of building/construction law, contract law, company law, trust and family law, administrative law and constitutional law. He had also dealt with many international trade law matters such as the free trade agreements concluded with Australia, New Zealand, India and Asian-China, as well as the WTO services and government procurement negotiations.

Edith Tan is the Assistant Director in the State Courts Community Justice and Tribunals Division ("CJTD"), Singapore where she assists the Senior Management in policy formulation, project management and the setting up of the upcoming Employment Claims Tribunals. Prior to joining CJTD, Edith was in the State Courts, Strategic Planning and Technology Division and was driving the Corporate Planning Cycle and assisting management in the planning of strategies, court policies and programmes towards the realisation of identified strategic thrusts, policies and goals of the State Courts. Before joining the State Courts, Edith was with the Accounting and Corporate Regulatory Authority ("ACRA"), Enforcement Division, where she investigated the breaches under the various Acts, such as the *Companies Act* and *Business Registration Act*, administered by ACRA and conducted cases in court as a lay prosecutor.

Appendix B Study Visit Schedule (Vancouver and Victoria)

Date	Time	Organization
November 28	9:00 - 10:30 AM	Community Court
	11:00 AM - 12:00 PM	Chief Judge Crabtree
	2:00 PM onwards	Small Claims Court representatives
November 29	9:00 - 11:00 AM	Employment Standards Branch and Tribunals
	Afternoon	Civil Resolution Tribunal
November 30	12:30 PM	Meeting with the Chief Justices of the BC Supreme Court/Court of Appeal (note: subject to confirmation)
	5.00 - 9:00 PM	Travel to Victoria
December 1	8:45 AM – 4:30 PM	See Appendix C
	After 5:00 PM	Travel to Vancouver
December 2	Departure	

Appendix C: Agenda for Visit in Victoria, December 1, 2016

Time	Topic	Speaker
8:55 – 9:00 AM	CRT Office Tour	Richard Rogers
9:00 – 9:30 AM	Change Management, including public communications and staff training (small claims)	Lisa Nakamura (DRO) Dan Chiddell (CSB) Jess Gunnarson (CSB) Erin Smith (CSB)
9:30 – 10:00 AM	Website Guides - PLEI content and plain language, structure and content for the CRT website	Lauryn Kerr (DRO) Lisa Nakamura (DRO) Darin Thompson (DRO)
10:00 – 10:15 AM	Break	
10:15 – 10:45 AM	BC Council of Administrative Tribunals	Emily Drown, Chair, BCCAT
10:45 – 11:45 AM	Lessons from Singapore: (1) ODR process; (2) "Primary Justice Project"; (3) "Friends of Litigants in Person" process; and (4) Neutral Evaluation process.	Singapore delegation
1:00 – 1:30 PM	Challenges faced by the BC Ministry of Justice team implementing the online system and how we overcame them	Mac Campbell (DRO) David Merner (DRO) Darin Thompson (DRO)
1:30 – 2:15 PM	Assessing Artificial Intelligence options for Online Dispute Resolution	Mac Campbell Darin Thompson
2:15 – 2:30 PM	Break	
2:30 – 3:30 PM	Legislative amendments to support ODR, e-filing, etc.	David Merner Darin Thompson
3:30 – 4:30 PM	Tribunal clustering and supports	David Merner and Jason Pallan

**MINISTRY OF JUSTICE
JUSTICE SERVICES BRANCH
BRIEFING NOTE**

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

ISSUE:

Release of the fourth anniversary update to the 2012 report *Criminal Justice System for the 21st Century*

SUMMARY:

- In February, 2012, Geoffrey Cowper, QC, was appointed to chair a review of the criminal justice system. Mr. Cowper's mandate was to identify ways in which Government, the judiciary, the legal profession, police and others should work together to address the problems that were impeding the efficiency and effectiveness of B.C.'s criminal justice system.
- Mr. Cowper's final report, *A Criminal Justice System for the 21st Century* (the "Report"), was released in August 2012. The Report formed the starting point of a transformation agenda for the justice and public safety sector
- Mr. Cowper has prepared a fourth anniversary update (the "Update") of the Report, which is scheduled to be released publicly on October 19, 2016.
- The overall tone of the Update is positive and includes eight recommendations. Mr. Cowper provides an overview of progress made, along with areas in which continued effort is required.

BACKGROUND:

- The Update is generally positive, noting that progress in meeting the goals set out in the Report has led to a "well-earned sense of achievement" and that the "the necessary cultural change is well underway and has been embraced widely."
- The Update highlights four broad themes demonstrated by and found within the justice sector over the past four years, including:
 - Exceptional leadership and a persistent pursuit of real change;
 - A high number of implemented projects, relative to the Report's recommendations and goals;
 - The integration of rigorous and critical evaluation; and
 - A shift toward seeking socially beneficial outcomes.
- The Update highlights a number of areas in which progress has been realized, including system transparency and accountability, improving early resolution rates, achieving better timeliness, improving the handling of complex prosecutions, and improved judicial major case management.

- Particular emphasis is placed on the achievements of the Criminal Justice Branch (CJB), with Mr. Cowper expressing agreement with Murray Segal's August, 2016 independent report recognizing CJB as Canada's leading prosecution service in innovation, collaboration and continuous improvement.
- However, the Update underscores that many significant reforms are still "mid-stream," emphasizing the need to drive for concrete results, sustained effort and adequate resourcing.
- Eight recommendations for renewed and/or focused effort are contained in the Update, including:
 - That each justice participant gives consideration to improving internal warning systems and developing policies to appropriately intervene when exceptional cases arise.
 - That the Minister refresh and clarify the mandate and membership of the BC Justice and Public Safety Council;
 - That high priority be given to the better use of the analytical power of the business intelligence systems already created in identifying priorities and evaluating outcomes;
 - The development of improved system-wide cost evaluation and reporting as part of the roll-out of projects and initiatives;
 - That the forthcoming Strategic Plan of the Justice and Public Safety Council include key system-wide key performance indicators;
 - That the Minister consider bringing Section 7 of the *Justice Reform and Transparency Act (JRTA)*, respecting reporting on performance in achieving the objectives of the Strategic Plan, into force;
 - Giving high priority to securing a systems analyst for use by the Supreme Court; and
 - That senior justice system leaders actively increase the public's understanding of restorative justice and its broader use within British Columbia.
- Mr. Cowper describes the development and acceptance of system-wide performance measures as being in its early stages, commending the initial progress made by the Justice and Public Safety Council in its November, 2015 performance measurement update.
- The November, 2015 performance measurement update provided by the Council acknowledges the Section 7 reporting requirement under the *JRTA* in its opening remarks, noting that the performance measurement work being undertaken was in anticipation of the requirement coming into force, which aligns with Mr. Cowper's recommendation.
- The Update also prioritizes a system-wide response to administrative offences and the resulting increase in demand for related prosecutorial, judicial, and corrections resources. The Update recommends careful research and collaborative pilot programs to identify approaches that best ensure public safety and improve offender behaviour.

- Emphasis is placed on the development of objective measures to determine an appropriate judicial complement, with the goals of improved budgeting of judicial resources and building public confidence.
- The Update highlights the Legal Services Society (LSS) Extended Duty Counsel pilot project as an example of improved systemic development, testing and evaluation. However, caution is advised in addressing the downstream financial pressures experienced by LSS in response to reduced time to trial and large case management.

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Attachment(s)

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A CRIMINAL JUSTICE SYSTEM FOR THE 21ST CENTURY

**Fourth Anniversary Update to the Minister
of Justice and Attorney General
Suzanne Anton, QC**

**D. Geoffrey Cowper QC
October 19, 2016**

1. Summary of Update

- 1.01 Four years have passed since delivery of the final report of the BC Justice Reform Initiative, entitled **A Criminal Justice System for the 21st Century (the “Report”)**. I am pleased to provide this brief update, which addresses the progress that has been made and makes a few recommendations on continued implementation.
- 1.02 The Report was well received, and many of its recommendations have been implemented. For instance, the Government published two substantial White Papers, the legislature unanimously passed implementing legislation in the *Justice Reform and Transparency Act*, and numerous changes and projects were initiated or influenced by the process leading to the Report. The Report, and the continuing support for reform, reflects a growing consensus around the steps required to build a better managed system to improve public safety and fairness, respond to the dynamic changes in criminal conduct, and operate with transparency and accountability.
- 1.03 To consider the progress that has been made, I reviewed as much available material as possible and interviewed some of the key participants in BC’s criminal justice system. I also looked at material from other jurisdictions, primarily other Canadian jurisdictions but also material from Australia, the United States, and the United Kingdom. I focus here on selected topics and the main areas on which I made recommendations in the Report.

2. Executive Summary

- 2.01 British Columbia has become a leader in justice system innovation and performance in many of the areas addressed in the Report. That achievement builds on a long history of innovation in British Columbia, which preceded the Justice Reform Initiative and resulted from the hard work of justice system participants in many complementary initiatives and projects. We should be proud of what has been accomplished over the past four years, as well as the ambition of the projects that are underway or in development.
- 2.02 Justice system participants share a sense of both achievement and possibility. The sense of achievement—in realising on some of the many ideas for improvement summarised in the Report—is accompanied by a sense of the possibility of achieving distinctive and enduring changes in both the processes and outcomes of BC’s justice system.
- 2.03 Progress to date includes improving early resolution rates, achieving better timeliness, improving the handling of complex prosecutions, and improved judicial major case management. Most of the significant reforms are, however, still in mid-stream with only anecdotal results available pending formal evaluation.
- 2.04 The necessary cultural change is well underway and has been widely embraced. This is demonstrated by the commonly expressed impatience for more consistent and concrete progress. How we think about performance within the criminal justice system is changing.
- 2.05 The justice system is far more able now to identify the important inflection points where a systems approach is necessary and worthwhile. For example, the identified need for an

eDisclosure system presents an inflection point that, if appropriately executed, would help achieve, not only effective disclosure, but savings throughout the system. In my view, successful and cost-effective implementation will depend on cross-platform planning and collaboration among the judiciary, representatives of the defence bar, and the Legal Services Society.

2.06 I encourage the Minister to consider these recommendations:

- (a) **I recommend the Minister refresh and clarify the mandate and membership of the BC Justice and Public Safety Council.**
- (b) **I recommend that high priority be given to the better use of the analytical power of the business intelligence systems already created in the identification of priorities and evaluation of outcomes.**
- (c) **I recommend the development of improved system-wide cost evaluation and reporting as part of the roll-out of projects and initiatives.**
- (d) **I recommend that the March, 2017 Strategic Plan include key system-wide key performance indicators.**
- ~~(d)~~(e) *I would recommend that s. 7 of the Act be brought into force.*
- ~~(e)~~(f) **I recommend giving high priority to funding a systems analyst for the use of the Supreme Court.**
- ~~(f)~~(g) **I recommend senior justice system leaders actively participate in increasing the public's understanding of restorative justice and its broader use within British Columbia.**

3. Progress

3.01 Progress in meeting the goals set out in the Report has led to a well-earned sense of achievement, and a sense of what is possible in the future. There are however, widespread concerns about how best to maintain momentum, make concrete and durable improvements, and obtain ongoing resources to realise outcomes that will be embraced by the public. The culture of the system is dramatically shifting, as demonstrated by the following:

- (a) Judges are deciding cases on a more timely basis. This is as a result of a number of factors including a backlog reduction project in the Provincial Court, increased early resolution rates, reductions in case volumes, and changes in the make-up of the case load. For example, for cases pending in British Columbia more than 18 months have declined from approximately 4,856 on March 31, 2012 to 1,700 on March 31, 2016. This places British Columbia on excellent footing with respect to the newly established standards for timely resolution of criminal cases. Widespread acceptance exists for the need to achieve timeliness in all aspects of the criminal justice system-- from investigation through trial and corrections;

- (b) Justice system participants consistently report a sea change in attitudes towards the value of collaborative and innovative measures that respect necessary measures of independence;
- (c) Information systems have been developed to better inform management and reform initiatives both across the system as a whole and within the constitutionally separate sectors;
- (d) The conduct of regular cross-sector discussions, such as those carried out at the Justice and Public Safety Council and the Justice Summits, has facilitated the identification of common problems and the implementation of complementary solutions to achieve better outcomes; and,
- (e) There is now a widespread acceptance of the need for the system to be similarly accountable to all British Columbians while preserving the flexibility to respond to particular problems and encourage local innovations.

3.02 Reform initiatives are not new to systems of justice, and the challenges of maintaining momentum and realising enduring change are both predictable and daunting. In my view, the Report's optimism has been borne out in the last four years, as has the need for patience, leadership, and resources. In summary, the last four years demonstrate the following:

- (a) **Leadership:** Exceptional leadership has demonstrated persistence (and patience) in pursuing both broad changes to the criminal justice culture and particular initiatives to achieve real change.
- (b) **Project implementation:** An astonishing number of initiatives have been implemented to act upon both the Report's recommendations and complementary goals established through other processes.
- (c) **Evaluation:** Rigorous and critical evaluation of the results achieved by various initiatives is now commonplace, expected, and accepted.
- (d) **Outcomes and the public:** The shift to seeking socially beneficial outcomes is ongoing and critical to serving the public. A notable example of this is the character of the debate about how best to address the overrepresentation of aboriginal persons in all aspects of the criminal justice system. There is a remarkable consensus that the fundamental goals are to make aboriginal communities safer and to address criminal acts against and by aboriginal persons with the most effective criminal justice tools available. I believe aboriginal communities will be best served by addressing both the particular characteristics of their communities and adapting what has worked elsewhere. I would observe that aboriginal leaders have expressed enthusiasm for tailored solutions which could make better use of the community's culture and resources such as restorative justice.

4. Social Context

4.01 The social context for reform referred to in the Report continues to present challenges. They include:

- (a) **Public expectations of leadership:** The trend towards higher expectations of leaders within the system continues. The public places more and more demands on public and private organisations and increasing expectations on leaders to be accountable for system performance and outcomes.
- (b) **Effective use of systems management and information technology:** This is no longer optional. All social services, domestic and international, governmental and non-profit, face similar challenges in making effective use of these resources.
- (c) **Expectations of innovation:** The justice system enjoys an enviable depth of goodwill in the community and its fundamental values are widely shared and supported. At the same time, the public has come to expect constant improvements in performance and service through innovation. Furthermore, the disruption of established ways of doing things has now been commonplace for so long it is no longer considered remarkable. It is expected.
- (d) **Transparency:** An expectation of transparency is replacing trust in opaque processes. Indeed, the fundamental shift in access has many implications for system management, including highlighting the need for effective intervention of exceptional cases. Exceptional cases have driven legal reform for centuries, as have changes in social understanding of the causes and influences affecting criminal behavior. In today's social media world, these factors can affect public perception of the justice system within hours.

5. System Issues

5.01 Timeliness

- (a) **Progress and goals**
 - (i) **Progress:** This feature of the Report received more attention than any other. There is truly a much broader understanding today of the value of timeliness of justice than there was four years ago. I note that other provinces are taking steps to address delays, and the Senate of Canada has an ongoing process. British Columbia's courts have seen improvement in the timeliness of adjudication. The Chief Judge gave this a high priority in the Provincial Court, and a number of complementary measures have helped reduce back logs with some reductions in time to trial. Cases within the system now generally fall within the presumptive standards recently set by the Supreme Court of Canada.

- (ii) *Jordan*¹: The Report contributed to a national discussion respecting the need to achieve timeliness, with both the majority and minority judgments in the *Jordan* case at the Supreme Court of Canada citing the Report. As a result of the hard work already undertaken, BC is well prepared to meet the new requirements for timeliness. The recognition of presumptive standards of 18 months in Provincial Court and 30 months in the Supreme Court for time to trial will require an effective managerial response. Indeed, the majority judgment seems to have chosen a presumptive standard to encourage systemic improvements.
- (iii) Exceptional cases: The Report focussed on various systemic changes aimed at producing better timeliness. The public's view of system performance has always been heavily informed by exceptional cases. This is not a new phenomenon. For example, a decades-long debate about whether to provide appellate review of criminal cases in the United Kingdom was only resolved at the turn of the 20th century by public alarm over a highly publicised wrongful conviction.² A natural tendency exists to bridle within all the justice participants at generalisations drawn from unusual and unfortunate particular cases. Whether fair or not, in my view, effective management now requires warning systems and the tools to intervene when required in such cases. While some of the information to do so is now at hand, there still appears a reluctance to intervene so as to preserve the independence of individual decision-makers within each justice participant, such as investigators, prosecutors, judges, and defence counsel. A long history of *ad hoc* and helpful interventions in particular cases has served to head-off potential problems and to achieve system savings and improve outcomes. **I recommend that each justice participant give consideration to improving internal warning systems and to develop policies as to what types of intervention may occur when exceptional cases arise.**

5.02 Other system issues

(a) Cross-platform collaboration and coordination

- (i) The BC Justice and Public Safety Council: The Council, created by statute, has published a province-wide Justice and Public Safety Plan. It certainly has appeared to increase cross-platform collaboration and communication. There are encouraging examples of joint development (among multiple branches, as well as with other government ministries providing input) of detailed business cases over the past four years. The Council appears to have had a constructive and useful role in encouraging these processes. Still, its role in the over-all system would appear to remain unsettled. Its role may be adjusted in light of experience, but the

¹ *R. v. Jordan*, 2016 SCC 27

² The case concerned the wrongful conviction of Adolph Beck, but was preceded by 75 years of advocacy for such a Court.

role and effectiveness of the Council ultimately rest largely on the Government's expectations for it. In 2012, some advocated inclusion of non-government actors such as the Legal Services Society, the private bar, or members of the public with particular expertise in systems management. Whatever changes are considered I strongly believe they need to be in the direction of encouraging rather than inhibiting collaboration. **I recommend the Minister refresh and clarify the mandate and membership of the BC Justice and Public Safety Council.**

- (ii) **Justice Summits:** The conduct of the Justice Summits by the Justice and Public Safety Council represents a distinctive success over the past four years. Other provinces view the make-up and cross-platform attendance as a remarkable achievement. Six Summits have now been conducted and the subject matters have expanded to include family law and non-criminal topics. Most recently mental health issues have been the focus of the sixth Justice Summit. The Summit process has evolved, and I encourage further development. I support the invitation-only format used for the summit process and the expansion to include other subject-matters. The Summit process was not intended to be a governance mechanism; it is unrealistic to think that it should be responsible for executing the projects or policies that it addresses. The Summit process could stall and become stale unless its participants can trace its work into concrete changes to the system.

(b) **Business information and management systems**

The Ministry has made a substantial investment in business information ("BI") and management. The existence of a cross-platform business information database that enables the examination of case histories from inception to resolution is a singular opportunity that may be unique to British Columbia. I recognise that proceeding from data to action can be a tremulous path, but it is also apparent that this type of information has great potential to enable better system management than hitherto thought possible. **I recommend that high priority be given to the better use of the analytical power of the business intelligence systems already created in the identification of priorities and evaluation of outcomes.**

(c) **Transparency**

Substantial progress has occurred in the transparency of the justice system. For example, the increasing publication of 'clear statements' as to charge approval decisions has, in my view, been a very salutary development. As observed in the Report, much of the system transparency may only be of occasional interest to the general public. It can however operate as a form of accountability, both within government, and as a means of communication with expert intermediaries in the media and other interested community organisations.

(d) **Effects on other justice services**

My conversations with participants revealed a continuing surprise about the effect of changes within parts of the system on other justice participants. This is a natural product of management resting primarily with the independent participants within the system, for which no easy solution is apparent. Improvements in cross-platform communications and collaborative approaches should eventually reduce this concern. **I would encourage the development of improved system-wide cost evaluation and reporting as part of the roll-out and evaluation of projects and initiatives.**

(e) **Administrative or breach offences**

- (i) The Report observed the then recent and dramatic growth in investigative efforts directed at administrative offences such as breach of conditions attached to release into the community and the resulting increase in demand for related prosecutorial, judicial, and corrections resources.
- (ii) Recent reports suggest that as much as 20% of all charges within the Provincial Court concern these administrative offences. The concerns expressed in 2012 about the widespread breach of conditions, and the lack of respect for the rule of law that this signifies, continue to be present. Police forces continue to believe that these charges represent an opportunity for focussed policing and that these hold out the promise of influencing offender behavior within the community in positive ways.
- (iii) So far as I can tell, this is an area which remains in need of a system-wide response that will necessarily include careful research, sound data and evidence, and exploring collaborative alternatives through pilot programs. Most of all, we need a rigorous consensus on the approaches that best ensure public safety and encourage better behavior on the part of offenders.
- (iv) I would identify achieving this consensus as a priority. The system's response to these administrative offences is characterised by decisions which are determined primarily by one actor but with significant effects throughout the system. A greater degree of common understanding, common goals and an over-all system approach remains both appealing and in the public interest.

(f) **Performance Measures**

- (i) The development and acceptance of performance measures for justice participants and for the justice system as a whole remains in its early stages. The Justice and Public Safety Council is contemplated as having ~~charged with~~ the responsibility under the *Act* of addressing these issues for the Province and I commend the clear discussion of the challenges and state of progress found in its November, 2015 Update on performance

measurement.³ **I would recommend that s. 7 of the *Act* respecting reporting on performance in achieving the objective of the Strategic Plan be brought into force.**

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- (ii) I remain of the view that the public are right to expect that the system will be managed to achieve transparent and accepted performance standards which include not only the traditional goals of justice and quality of process but other important goals such as the improved outcomes for people and communities, timeliness, efficiency and cost-effectiveness.
- (iii) I also strongly believe that system-wide performance goals and measures will require adequate information systems, and will encourage and reward innovation, collaboration and communication.
- (iv) There is reassuring evidence that the information systems needed are well along to development and the system analysis capacity has undergone substantial growth since the Report.
- (v) At this stage however we do not have publicly available measures that can be reported against and we are still exploring the over-all process.
- (vi) In my view, moving forward with performance measures is critical to producing durable change to the criminal justice system. In many areas where improvement has been made in the past the absence of accountable performance measures has contributed to a return of unhealthy system performance. Making performance measures public and real for both internal and public purposes will not only aid in the reform process itself, but will provide a means and assurance of continuing improvement and performance.
- (vii) **I recommend that the March, 2017 Strategic Plan include key system-wide key performance indicators.**

5.03 Institutional Independence

- (a) In 2012, concerns existed about how to maintain the necessary constitutional independence of judges, investigators, prosecutors, and defence counsel in the development, implementation and evaluation of systemic reforms.
- (b) On my review, justice participants have become increasingly comfortable with engaging one another in a manner that respects one another's necessary independence. Widespread recognition now exists of the interdependence that flows from the nature of the criminal justice system and the benefits of collaboration, coordination, and effective communication.

³ Section 7 of the *Act requiring an annual report on the performance of the sector* has not yet been declared in force.
<https://www.justicebc.ca/wp-content/uploads/sites/11/2016/03/pm-nov-2015.pdf>

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5.04 Provincial Court

- (a) **Transparency and accountability:** The Provincial Court has made huge strides in making available accessible information respecting timeliness and the trends in its work. The Court's website and the Chief Judge's Annual Reports offer the public a quick understanding of timeliness by subject area.
- (b) **Scheduling project:** The Court has rolled out an assignment court scheduling system in the seven highest volume courthouses in the Province. In those locations, all cases ready to proceed to trial first go to an assignment court where they are assigned judges for trial. This process is intended to reduce the occurrence of judicial downtime that tends to arise when cases resolve on the day of trial. Anecdotally, the process appears to be proving effective in increasing judicial utilisation, and facilitates the ability to assign cases in order of their priority for judicial attention. An evaluation of the assignment court model will be undertaken and will shape its future in British Columbia. The assignment court provides an excellent example of innovation in services which was championed by the Court, facilitated by Court Services and others in the system, and accomplished without sacrificing judicial independence.
- (c) **Judicial complement:** The Report's recommendations to develop objective measures to determine an appropriate judicial complement have been the subject of study but no resolution. The legislative authority to realise this recommendation is in place but not declared in force. Appointments have kept pace with retirements and at least 13 judicial appointments have been made since 2012. A more advanced understanding of objective standards for judicial complement would assist in the budgeting of judicial resources and build confidence in the quality of over-all management of the system.

5.05 Supreme Court of British Columbia

- (a) **Major case management**
 - (i) In 2012, the Supreme Court issued a revised Criminal Practice Direction (Criminal Pre-Trial Conference Process) and extended it to the entire Province.
 - (ii) Two roundtables on complex prosecutions hosted by the Canadian Institute for the Administration of Justice, which included representation from judges, prosecutors, legal services, police, and other interested parties occurred in the fall of 2014 and 2015.
 - (iii) These efforts, in my view, demonstrate the Court's recognition of the need to give priority to major cases and the important role of involving other justice participants in a collaborative process to develop and implement changes.

- (b) The Report recommended the funding of a systems analyst for use by the Supreme Court. I understand that this proposal has been studied and that funding has been made available to assess the Court's business processes and resourcing needs. The availability of that capacity would not only prove valuable, but its absence may frustrate the ability to execute on system changes which depend on that expertise. **I recommend the funding of a systems analyst to provide advice to the Supreme Court be given a high priority.**

5.06 Criminal Justice Branch

- (a) **General progress:** The reach, depth, and ambition of the many changes that have been undertaken and are underway by the Criminal Justice Branch (CJB) should be a matter of great pride. I agree with Murray Segal's independent report, delivered in August 2016, in which he recognised the CJB as Canada's leading jurisdiction in innovation, collaboration, and continuous improvement.⁴ I am pleased to attach his report as Appendix A. The CJB's leadership and members have adopted many changes in strategy and operational principles to improve system performance. These include improving file ownership and management processes, and administrative business procedures. The three year strategic plan detailed priorities including the launch of a Comprehensive Disclosure Strategy, implementing a Continuous Improvement Initiative, monitoring progress related to the reform efforts, and assessing the implementation of the Enhanced Crown File Ownership and Quality Standards.
- (b) **Enhanced Crown file ownership and quality standards:** In 2014, the CJB initiated case management and process reforms to facilitate early resolution of prosecution files and generally seek case efficiencies. This measure appears successful in achieving its goals.
- (c) **Performance measures:** The CJB articulated clear performance measures such as the proportion of files resolved before arraignment, reduced the time to disposition, and reduced the number of Crown Counsel appearing on a file.
- (d) **Information systems:** The CJB is currently working with Corrections on an Integrated Corrections Operations Network (ICON) II. The second phase of the project is a Crown eDisclosure Information Technology system (CREDIT), which would enable the CJB to be in timelier compliance with the Supreme Court of Canada's requirement to provide both in- and out-of-custody accused with appropriate access to eDisclosure evidence. The CJB will pilot test CREDIT before a province wide rollout.⁵
- (e) **Major cases:** The Major Case Management Model for large, high-profile cases has now been in operation since 2012. The Roundtable process already referred to has contributed to a cross-platform discussion around major case reforms. In my

⁴<http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/reports-publications/cjb-segalreport-2016.pdf>

⁵ CJB Strategic Plan 2016/17-18/19 at page 7 and 11.

view, progress regarding major case management will benefit substantially from involving all the participants throughout the development and evaluation of the project will substantially benefit the ministry's goal.

- (f) **Scheduling:** In alignment with both the Ministry's goals and the Report, the CJB partnered with the Court Services Branch to design and develop a Crown Counsel electronic scheduling system (CCSS) with the ultimate goal of supporting Crown file ownership. The first version of CCSS was piloted in 2015 and a phased province-wide roll out is planned for 2016/17. CCSS will enable Provincial Court Judicial Case Managers to access assigned Crown Counsel availability via integration with the Provincial Court Scheduling System (PCSS), the creation of integrated Crown Counsel, trial and Crown office calendars, and the ability for court appearances to automatically be populated to Crown Counsel outlook calendars.⁶ This multi-sided platform will greatly enhance efficiency. A collaborative technology platform has the potential to create an integrated digital workspace, allowing for other business workflows, such as disclosure and document production.
- (g) I certainly agree with the following CJB priority initiatives:
 - (i) **Comprehensive Disclosure Strategy:** Addressing inefficiencies and risks in the disclosure process is a justice reform priority. The CJB and the Policing and Security Branch are collaborating in the development and implementation of a Comprehensive Disclosure Strategy with the goal of achieving more effective and efficient management of criminal case disclosure across the criminal justice system. The CJB anticipates that the strategy will be fully implemented throughout 2017. I would observe that early involvement of representatives of the judiciary, defence bar, and Legal Services may well improve the likelihood of achieving both efficiencies and harvesting cost savings.
 - (ii) **Continuous Improvement and Quality Assurance:** The two-year Continuous Improvement initiative seeks to streamline administrative processes that support the everyday work of the CJB, ranging from records management to witness notification.
 - (iii) **Business intelligence and performance measurement:** The CJB is now entering the performance-monitoring phase of several of the Report's proposals for reform. The Branch is continuing to use more business intelligence (data and analytics) to provide insight into its operations. The CJB's use of business intelligence includes operational metrics and progress measures to guide process and practice improvements.
- (h) **BC Prosecution Service open data sets:** In line with the proposals for reform, the CJB continues to update the Charge Assessment and Concluded Prosecution data dashboards on an internet site. Justice sector information that is provided by

⁶ CJB Strategic plan 2016/17 - 2018/19 at page 13.

the Ministry on this same site includes data from the Court Services and Corrections Branch. In my view this advances the transparency and information sharing recommendations in the Report.

5.07 Legal Services Society (LSS)

(a) Extended duty counsel

- (i) This pilot project is a good example of a system approach in the development, testing and evaluation that is now becoming part of our justice culture in British Columbia.
- (ii) The pilot project facilitated greater access to early advice through expanding the traditional LSS duty counsel model. One goal was that clients could be advised as to the advisability entering into plea negotiations with the Crown earlier. Greater continuity in the roster of duty counsel was aimed at helping to achieve appropriate early resolutions to cases. The expectation was that even summary advice clients would be better prepared to address their charges.
- (iii) Improved system efficiency was a goal through increased resolution rates and reducing appearances thereby reducing the process costs on other participants in the system.
- (iv) The need to experiment, test, evaluate and adapt was recognised in proposing it as a pilot project.
- (v) LSS provided a rigorous business case for this project that included specific performance metrics and an analysis of costs and benefits that would likely accrue to other justice participants.
- (vi) This pilot project was externally evaluated and has proven a success in achieving early resolutions and providing more continuous and timely service to clients.
- (vii) The June 28, 2016 external evaluation report of the pilot project reports that the cost is \$669 per client receiving expanded services, and \$241 for clients who receive summary advice.
- (viii) The pilot's resolution rate during the March to October 2015 period was 86%. Compared to Abbotsford Provincial Court (46% settlement rate) and Kelowna Provincial Court (48% settlement rate) over the same period. The pilot not only settled more cases, but it did so in fewer days on average than either the Abbotsford or Kelowna Provincial Courts.⁷

⁷ Expanded Criminal Duty Counsel Summative Evaluation Report - June 28, 2016, page 43.

- (ix) By self-monitoring its progress, the Pilot seeks to improve its communications with external stakeholders, and has put forth recommendations to improve its overall data tracking systems and monitor key service metrics.
- (b) **Downstream financial pressures**
 - (i) Reducing the time to trial will generally increase the financial demands on LSS by increasing the case costs incurred within given fiscal periods. Similarly, large cases can dramatically increase or decrease LSS costs.
 - (ii) Various efforts have been undertaken to cope with the financial consequences to LSS of upstream changes in case management trends. British Columbia enjoys a special resource in the existence of an independent and highly sophisticated legal aid provider. It is important to realise the benefits of collaboration and innovation by seeking system-wide efficiencies and savings. I believe LSS could be a more vital part of that process.

5.08 Police and Corrections

- (a) **General:** In many ways police and corrections have been sensitive to systemic issues for longer than other actors in the justice system. The development of focussed policing initiatives (now being refreshed in light of current demands) long ago is just one example. Similarly corrections policy has long had a substantial systematic component and a disciplined offender information culture.
- (b) **Mental health initiatives:** Since 2012 there has been increased recognition of the systemic effects of mental health issues in the community on all aspects of the criminal justice system.
- (c) **Focussed policing initiatives:** The use of focussed policing initiatives to respond to the increase in domestic violence reports and the particular needs of the indigenous community is laudable. I would hope that the effects of these initiatives on other justice system participants will be taken into account in informing policing policy.
- (d) **Administrative or breach offences:** The significance and appropriate response to breach offences remains a topic of diverse opinion, as the ongoing high level of enforcement has its source in policing rather than corrections. This also seems to be an area where a system-wide evaluation and response seems to have One of the justifications for policing policy is influencing offender behaviour, and yet conditions imposed as a result of administrative offences are intended to permit supervision of conduct within the community—something within the expertise of Corrections, I am not fully aware of the degree of Corrections' involvement, but this is an area where Corrections appears to have an obvious expertise and perspective to contribute to a system-wide approach to administrative offences.

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The recommendations of the Report concerning these offences appear to remain relevant and worth implementing.

5.09 Implications for other services

- (a) The focus on criminal system reform will obviously have direct and indirect effects on other service areas. One obvious implication is that the priority given to addressing criminal cases in the Provincial Court can have negative effects on the Court's other responsibilities such as child apprehension, family law, and small claims.
- (b) Leaders within the Ministry are aware of these interrelationships and, at some point the integration of policy and priorities between the different services will need greater attention.
- (c) The longer-term interests in enhanced public safety and effective criminal justice will of course benefit from more effective family law and civil justice systems.

5.10 Restorative Justice and Diversion

- (a) The Report recommended the expansion of the use of diversion and restorative justice as complementary to the justice system and having great potential to have a positive impact on victims, offenders, and the general community. Although there has been some support expressed for that recommendation, there does not seem to be much evidence of increased use and acceptance by others within the criminal justice system.
- (b) There is, however, evidence of growing public acceptance and support for the approaches afforded by restorative justice programs. Indeed, similar and overlapping proposals frequently surface in discussion of the important issues respecting public safety, offender rehabilitation, and integration in indigenous communities.
- (c) B.C. has been an international leader in the development of restorative justice theory and programs but its widespread use has in my view been impaired by the perception by some of its advocates and many of justice system participants that it is set against other criminal justice approaches. The most compelling case for its use in my view lies with its potential as a complementary alternative. The experience of the past four years would suggest that adding restorative justice to the mainstream will require the endorsement of senior leaders within the system.
- (d) From a systems perspective, the advantages to be gained from alternatives such as restorative justice are obvious and compelling. However, these programs continue to appear to lack senior champions. **I recommend senior justice system leaders actively participate in increasing the public's understanding of restorative justice and its broader use within British Columbia.**

5.11 First Nations

- (a) The Report observed the importance of addressing the First Nations dimension of the criminal justice system. However, given the Review's limited ability to

consult First Nations and review the data and many proposals in this complex area, no recommendations were made. Both before and since then many have commented on the need to take measures to address aboriginal victims, offenders and communities in the criminal justice system. First Nations leaders have properly pointed out that the involvement of their communities will be critical to the assessment of proposals and the successful implementation of any changes or programs. First Nations communities have called for improvements to public safety and justice that reflect their own priorities but also share a good deal with other British Columbians. I would offer the following limited comments from the perspective of the Report to this important and timely public debate.

- (b) First, this is an historic opportunity to apply 21st century tools to achieve improvements in the level of crime and public support for the criminal justice system in British Columbia for a community that is suffering from an ongoing and disproportionate level of violence and crime. Secondly, the scale and urgency of these issues cry out for effective collaboration, innovation and effective use of modern information and management systems.

- 5.12 This brief and summary review demonstrated to me that a dramatic change in the culture of the criminal justice system in British Columbia is well underway. The leaders and professionals who engage directly with cases and the public have become far more aware of the need for change, which was reflected in part in the Report.
- 5.13 Many of the needed changes are midstream. Enduring change will only be achieved through concrete results that are embraced by the public. Concrete results not only accomplish better performance but inform and encourage further progress. The hard work carried out in the past four years deserves recognition and approval, but also ongoing encouragement and resources.

**MINISTRY OF JUSTICE
JUSTICE SERVICES BRANCH
BRIEFING NOTE**

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

ISSUE:

Approach that government can take in the timing and selection of the next Chief Judge, following the expiration of the current Chief Judge's term on April 8, 2017.

DECISION REQUIRED/ RECOMMENDATION:

s.13

SUMMARY:

- Chief Judge Thomas Crabtree's appointment expires three days before the interregnum period begins prior to the May 2017 election. A number of variables need to be considered before deciding which approach to take in the selection of the next Chief Judge.

BACKGROUND:

- Chief Judge Crabtree is serving a 7-year term as Chief Judge of the Provincial Court of B.C. which expires on April 8, 2017.
- The provincial election is set for May 9, 2017.
- On April 11, 2017, when the writs of election are issued, the interregnum period begins.
- s.22
- Records show that, for Chief Judge Crabtree's 2010 appointment, a selection process was used involving broad consultation with the provincial judiciary and a selection committee comprised of the Acting Deputy Attorney General, incumbent Acting Chief Judge, and public representatives.

DISCUSSION:

Interregnum Period

- The interregnum period begins on April 11, 2017, when the writs of election are issued. As a general rule, normal government business continues as usual; however, it is expected that government will exercise restraint in its actions during the interregnum period, confining itself to necessary public business, either routine or urgent.
- On the one hand, it is arguable that the appointment of the Chief Judge, as it is set out in statute as a 7-year term, and expires on April 8, 2017, is routine and

necessary public business. On the other hand, usual practice is that government postpones appointments to significant positions until post-election. ^{s.13,s.14}

s.13,s.14

Term of Office

- Prior to April 11, 2013, there was no term of appointment for a Chief Judge in the *Provincial Court Act*. General practice was to appoint a Chief Judge for five years. Chief Judge Crabtree was initially appointed for a 5-year term but it was extended to seven years following consequential amendments to the *Provincial Court Act* specifying a 7-year term, effective April 11, 2013. The following subsections were added to section 10 at this time:

(5) The chief judge holds office as chief judge for a term of 7 years or until the chief judge

(a) resigns as chief judge, or

(b) resigns or ceases to hold office as a judge under this Act.

(6) In the case of the incapacity or death of the chief judge or if the office of chief judge is otherwise vacant, the Lieutenant Governor in Council may appoint a judge to act as chief judge until the date on which a new chief judge takes office under this section.

(7) A judge appointed to act as chief judge under subsection (6) has all the powers and must perform all the duties of the chief judge.

- Across Canada the term of office for the Chief Judge varies. In B.C., Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, and Newfoundland and Labrador the respective statutes governing provincial courts set out a 7-year term for the Chief Judge. New Brunswick's statute allows for a reappointment, while statutes in Alberta, Saskatchewan, Manitoba and Quebec do not allow for a reappointment. Ontario's statute sets out an 8-year term of appointment, but if a successor has not been appointed upon expiry of the term, the Chief Justice (equivalent to a Chief Judge in B.C.) continues in office up to nine years. Reappointment is not allowed in Ontario. Statutes in PEI and the Northwest Territories provide for a 5-year appointment, while Yukon's statute provides for a 3-year appointment. Nova Scotia does not specify a term in its statute. See Appendix 1 for a comparison chart of each province and territory's statutory provisions.

Vacancy, Reappointment or Temporary Appointment

- The *Provincial Court Act* provides that the Chief Judge holds office for a term of seven years or until the Chief Judge resigns. Once the Chief Judge's term expires and the office is vacant, the *Act* provides the LGIC may appoint an acting Chief Judge until a new Chief Judge takes office. ^{s.14}

s.14

Selection Process (note: further information on the selection process used across Canada has been requested through the Heads of Court Administration group)

- The *Act* does not set out a selection process for a new Chief Judge.
- The 2010 selection process involved disclosure of the applicants for the office, as well as broad consultation with the provincial judiciary and a selection committee comprised of the Acting Deputy Attorney General, incumbent Acting Chief Judge, and public representatives.

s.13

- Appendix 2 compares the selection processes used in Manitoba and B.C. (in 2010) and proposes a 2016-17 selection process for B.C.'s Chief Judge.

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OPTIONS:

s.13

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s.22;s.13

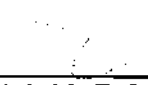
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OTHER MINISTRIES IMPACTED/CONSULTED:

- Court Services Branch and Legal Services Branch, Ministry of Justice, have been consulted on this issue.

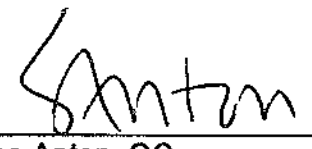
OPTION APPROVED

DATE:



Richard J. M. Fyfe, Q.C.
Deputy Attorney General and
Deputy Minister, Justice
s.13

DATE:



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Attachment(s)
Appendix 1: s.13
Appendix 2: