

DELAYING JUSTICE IS DENYING JUSTICE: AN URGENT NEED TO ADDRESS LENGTHY COURT DELAYS IN CANADA

EXECUTIVE SUMMARY

CONTEXT

Criminals on our streets. Traumatized victims. Frustrated Canadians. The consequences of court delays are significant and severe, and all levels and branches of government must take immediate action to address them.

In February 2016, the Senate Committee on Legal and Constitutional Affairs began a study on delays in Canada's criminal justice system.

It is no secret that delays plague criminal proceedings in Canada. Nevertheless, the Committee's findings are alarming.

Serious criminal charges have been stayed as a result of court delays, convictions have been overturned and the Committee heard that complainants feel victimized all over again when the wheels of justice turn too slowly.

CONSEQUENCES

Operation SharQc should have been a success story.

An extensive Quebec police operation arrested 156 people alleged to be members or associates of the violent Hells Angels motorcycle gang.

But during the resulting mega-trials, more than 30 accused people were released due to delays and five men accused of gangland murders and drug trafficking were freed after the Crown failed to promptly disclose evidence to the defence.

In another deeply disturbing case, Ontario teacher Kenneth Williamson – who had been sentenced to four years in prison for dozens of sex attacks on a troubled 12-year-old boy – had his convictions set aside and his charges stayed by the Ontario Court of Appeal because of excessive delay.

In these examples, Canadians wanted to see the accused people prosecuted fairly and promptly. Instead – after months and years of dithering and delay at the taxpayer's expense – these people were cut loose without regard to the evidence for or against them.

Court delays cause Canadians to lose confidence in the justice system.

RECOMMENDATIONS

This interim report provides an overview of the Committee's findings to date and makes four recommendations that the Committee believes will result in a more efficient use of justice system resources.

As the Supreme Court recognized in its July 2016 decision of *R. v. Jordan*, there is a “culture of complacency in the system towards delay” that requires a significant shift in attitudes.

That shift can begin the federal government’s appointment of judges. The Committee has noted that many judicial vacancies remain unfilled. This unnecessarily limits court resources.

The committee believes judges should take advantage of the tools at their disposal to improve case management practices.

Further, other potential solutions to court delays can be found in restorative justice programs and “alternative courts” – like drug treatment and mental health courts – which prioritize rehabilitation over punishment. When used appropriately, senators believe they would increase the fairness and efficiency of the justice system.

Additionally, employing “shadow courts” – the practice of overbooking trial time to avoid empty courtrooms – has significantly increased court capacity in Saskatchewan.

Provincial remand centres contain thousands of accused people who have not been convicted of any crime. Therefore, technological solutions could also make court appearances more efficient and could be used to monitor some accused people so they do not need to be held in detention while awaiting trial.

THUS, THE COMMITTEE RECOMMENDS:

- 1 | That the federal government work with provinces, territories and the judiciary to improve case management practices and to reduce the number of unnecessary court appearances.
- 2 | That the federal government take immediate steps to ensure a more effective appointment system is put in place so that judicial vacancies are promptly filled. The committee notes that many judicial appointments go unfilled for lengthy periods of time.
- 3 | That the federal government work with the provinces and territories to explore the implementation of restorative justice programs, alternative courts and shadow courts.
- 4 | The committee recommends investing in technology to modernize and increase the efficiency of criminal proceedings, and to reduce the warehousing of accused people in remand centres.

The Committee believes implementing these recommendations could meaningfully improve the administration of justice in Canada.

NEXT STEPS

Senators are continuing to study court delays in the criminal justice system. In the fall, the Committee will begin a cross-country fact-finding mission to gather more evidence from justice system participants.

Their testimony will form the basis of a comprehensive report on court delays, which will contain more recommendations crafted to ease this crippling paralysis.

The final report is expected to be tabled in the spring of 2017.