L'Alberta demande aux procureurs d'abandonner les procès perdus d'avance

Radio Canada Alberta
Camille Feireisen
8 mars 2017

En proie à une pénurie de procureurs, l'Alberta est la première province à demander à ses avocats d'abandonner certains dossiers pour sauver du temps et faire des économies. Le ministère de la Justice donne des directives à suivre pour « trier » les accusations et déterminer si elles doivent conduire ou non à une poursuite judiciaire.

Cette information écrite dans un document de neuf pages obtenu par Radio-Canada a été présentée le 27 février aux procureurs de la Couronne. Elle a été rendue la veille de l'annonce de la procureure en chef, Shelley Bykewich, qui a annulé les poursuites contre 15 personnes accusées d'actes criminels, en raison d'un « manque de moyen. »

Le protocole indique les directives à respecter pour « trier » les accusations. L'objectif : cesser de lancer des poursuites pénales lorsque la condamnation n'a qu'une « mince chance » de réussir.

Par exemple : « [...] un procès de plusieurs semaines qui a une mince chance d'obtenir une condamnation pour meurtre au premier degré quand un plaidoyer pour meurtre au second degré a été offert, cela peut ne pas être un usage approprié des ressources. »

Ce protocole doit avant tout permettre de libérer des ressources destinées à s'occuper des infractions graves et violentes, estime la ministre de la Justice, Kathleen Ganley. « Le protocole souligne les règles que les procureurs doivent suivre [pour déterminer si un dossier mérite d'être mené jusqu'au tribunal ou non] et précisent quelles autres mesures peuvent être prises », explique-t-elle.

Le document stipule notamment qu'il faut d'abord évaluer la viabilité du dossier.

Le deuxième point abordé concerne des lignes directrices plus précises pour analyser si une résolution rapide est possible, notamment avec des accords de plaidoyers, y compris pour les infractions graves ou violentes.

Il s'agit par exemple d'évaluer si une arrestation policière sans poursuite est suffisamment dissuasive et de préférer d'autres solutions que les poursuites, précise la ministre.

Les ressources limitées, un nouveau facteur

L'Association des procureurs de l'Alberta, qui a tiré la sonnette d'alarme la semaine dernière sur leur manque de ressources, confirme que les procureurs ont toujours eu comme mandat de juger la pertinence d'une poursuite selon les critères de l'intérêt public et de ses chances d'obtenir une condamnation.

Ce qui est toutefois nouveau pour les procureurs, explique le président de l'Association James Pickard dans un courriel, c'est de devoir prendre en compte ce manque de ressources pour décider si une infraction, même grave, conduira à un procès.

« C'est désormais clair dans ce protocole de triage que les ressources limitées sont maintenant un facteur que nous devons prendre en compte dans tous les dossiers, même en cas d'infractions graves et violentes, pour prendre notre décision définitive », écrit-il.

L'Alberta, première province avec un tel protocole

De son côté, le président de l'Association canadienne des juristes de l'État, Rick Woodburn, considère que ce protocole pourrait entraver l'indépendance des procureurs de la Couronne. « Les procureurs ne devraient pas avoir à se préoccuper du manque de ressources », estime-t-il.

Selon lui, le problème de désengorger le système judiciaire existe dans toutes les provinces, d'autant plus depuis l'arrêt Jordan de la Cour suprême l'an dernier, imposant des limites à la durée des procédures judiciaires. Cela impose aussi de nouveaux défis aux provinces, qui tentent de coordonner avec ces directives, pense-t-il.

L'Alberta est toutefois la première à imposer un protocole de pratique à ses procureurs, d'après Rick Woodburn, qui s'inquiète notamment du fait que le public n'est pas assez informé de la situation.

«Comme tous les autres ministères [le service des procureurs de la Couronne] doit expliquer au public qu'il manque de ressources et pourquoi, avant d'aller de l'avant avec ce protocole. D'un point de vue éthique, cela doit être fait pour ne pas manquer à leur devoir.»

— Rick Woodburn, président de l'Association canadienne des juristes de l'État

D'après l'avocat de la défense d'Edmonton Brian Beresh, ce genre de tri est nécessaire, car certaines affaires n'ont pas besoin d'être menées en procès. Il ne s'attend pas à ce que ce protocole fasse néanmoins une grande différence pour alléger la pression sur le système

judiciaire, mais abonde dans le même sens que Rick Woodburn sur un point : le système judiciaire souffre d'un sous-financement criant.

«Il s'agit juste d'un pansement mal appliqué sur un système judiciaire cassé et qui doit être révisé.»

— Brian Beresh, avocat de la défense

Selon lui, cette révision devrait d'abord passer par une vérification plus rigoureuse des affaires avant que celles-ci ne soient menées en cour ainsi qu'un meilleur accès à de l'aide juridique.

Plus de financement, demande l'opposition

Le parti d'opposition officielle Wildrose a fortement critiqué ce nouveau protocole et demandé son retrait immédiat.

«Ceux qui sont accusés d'infractions criminelles devraient toujours être poursuivis, dans toute la mesure de la loi. Il y a de la place pour le tri dans notre système, mais pas pour cela. C'est une urgence qui rend nos rues moins sûres.»

— Brian Jean, chef du parti Wildrose

Brian Jean s'inquiète notamment de ce qu'il va advenir de certains délinquants violents.

Même son de cloche du côté de Mike Ellis du Parti progressiste-conservateur, qui juge ce protocole inacceptable. « Il faut que le gouvernement néo-démocrate s'assure d'avoir les fonds disponibles pour financer la justice », estime-t-il.

La ministre assure pour sa part qu'aucun crime grave ne restera impuni. Elle a aussi déclaré que le gouvernement provincial envisageait d'injecter plus d'argent dans le système judiciaire afin d'éviter que les poursuites retardées ne soient abandonnées.

Grève des juristes: l'Assemblée nationale a embauché une briseuse de grève

Simon Boivin
Le Soleil
13 mars 2017

(Québec) L'Assemblée nationale a bel et bien contrevenu aux dispositions anti-briseurs de grève pendant le conflit avec les juristes de l'État, constate un rapport d'enquête du secrétariat du Travail.

Au terme de son investigation, l'enquêteur Jean-Pierre Gosselin conclut «qu'il y a effectivement eu embauche d'une personne à titre d'avocat après le début du conflit, et ce, en contravention des dispositions» contre les travailleurs de remplacement prévues au Code du travail.

À la mi-janvier, en plein conflit, Les avocats et notaires de l'État québécois (LANEQ) se sont plaints qu'une nouvelle employée occasionnelle de l'Assemblée nationale exécutait des tâches qui leur incombaient en temps normal. L'article 109.1 du Code du travail prévoit que l'employeur ne peut pas «utiliser les services d'une personne pour remplir les fonctions d'un salarié faisant partie de l'unité de négociation en grève».

Embauchée juste avant Noël, l'avocate a été réaffectée à un autre type d'emploi le 23 janvier, après la dénonciation de LANEQ. Le secrétaire général de l'Assemblée nationale, Michel Bonsaint, a alors plaidé une erreur de «bonne foi» due à une mauvaise communication entre la direction des ressources humaines et celle des affaires juridiques et parlementaires. Cela ne «visait aucunement à contourner le droit de grève».

Des excuses
Interrogée par Le Soleil, lundi, une porte-parole a toutefois maintenu que la nouvelle employée - comme tous les occasionnels de l'Assemblée nationale - n'était pas syndiquée. Elle ne faisait donc pas partie de LANEQ, selon elle. Le rapport de l'enquêteur soutient le contraire. «Il est admis que ce poste relève de l'unité de négociation en grève, écrit

M. Gosselin. Il est également admis que cette embauche contrevenait aux dispositions» anti-briseurs de grève.

L'Assemblée nationale a présenté ses excuses à LANEQ. Le président du syndicat, Me Jean Denis, ne s'attend pas à ce qu'il y ait des suites. «Ils se sont rétractés rapidement, a-t-il commenté au Soleil. Est-ce qu'ils ont vraiment commis une erreur de bonne foi? Ils devaient bien savoir qu'on était en grève, on était toujours à l'Assemblée nationale» pour manifester. Me Denis croit surtout que l'Assemblée s'est fait prendre la main dans le sac. «Faute avouée est à moitié pardonnée», a-t-il philosophé.

Si LANEQ a obtenu gain de cause contre l'Assemblée nationale, il n'en a pas été de même pour le ministère de la Justice. L'utilisation d'un stagiaire n'allait pas à l'encontre des règles, selon l'enquêteur.

Une loi spéciale a mis fin aux quatre mois de grève de LANEQ. Le plus long conflit de l'histoire de la fonction publique au Canada. Les négociations supplémentaires prévues à la loi spéciale doivent débuter mardi. Les juristes réclament une équité de traitement avec les procureurs de la Couronne.

Juristes de l'État: compte à rebours de l'ultime négo, après la loi spéciale

La Presse canadienne
14 mars 2017

Le compte à rebours vient de commencer pour les juristes de l'État, qui ont amorcé mardi une ultime négociation en vue de tenter d'arracher quelques gains au gouvernement... après l'adoption de la loi spéciale.

La loi spéciale qui avait forcé leur retour au travail, le 28 février dernier, donnait aux parties 45 jours pour négocier une nouvelle convention collective, à défaut de quoi le gouvernement du Québec leur imposera des conditions de travail.

La loi avait aussi mis fin à une grève qui avait commencé le 24 octobre dernier, qui avait ralenti le processus législatif à l'Assemblée nationale et causé maints reports devant divers tribunaux - même si les services essentiels étaient assurés.

C'est donc avec "le fusil sur la tempe" que ces ultimes négociations ont débuté, mardi matin, a indiqué au cours d'une entrevue avec La Presse canadienne le président du syndicat Les Avocats et notaires de l'État québécois, Me Jean Denis.

"On a comme une obligation de résultats. C'est du jamais vu! Non seulement on a parlé de négociation de mauvaise foi, dans la dernière grève - et on en a eu un exemple dans les deux dernières semaines qui ont précédé la loi spéciale - mais là, on enlève la liberté de négocier; c'est encore pire. On nous dit: 'vous ne négocierez pas ça; vous allez négocier ça. Et si vous n'avez pas une entente; vous allez avoir moins que tous les autres ont obtenu dans la fonction publique au niveau des augmentations salariales'", a critiqué Me Denis, qui ne décolère pas.

LANEQ avait deux revendications principales: la reconnaissance de l'indépendance de ses membres, de leur statut professionnel, ainsi que la parité avec les procureurs aux poursuites criminelles et pénales.

Elle avait proposé un mécanisme d'arbitrage qui lierait les parties et était prête à laisser tomber son droit de grève en contrepartie, mais le gouvernement avait refusé. Le gouvernement, de son côté, affirme qu'il ne peut laisser une tierce partie décider d'une question aussi importante, qui implique aussi des déboursés gouvernementaux.

Quand on lui a demandé s'il était tout de même raisonnablement optimiste pour ces 45 jours d'ultimes négociations, Me Denis a lancé: "raisonnablement optimiste? Je vous dirais que non. Est-ce qu'on va travailler pour avoir le meilleur pour nos membres? Oui."

Les 1100 avocats et notaires membres de LANEQ travaillent au sein de plusieurs ministères et organismes gouvernementaux.

LANEQ a déjà fait part de sa volonté de contester la constitutionnalité de la loi spéciale devant les tribunaux et a déposé une plainte contre le gouvernement pour négociation de mauvaise foi. Elle s'adresse également au Bureau international du travail et conteste diverses décisions qui ont été rendues par des tribunaux durant sa grève.

More than 1,000 Ottawa criminal cases 'at-risk' of breaching delay limit

Andrew Duffy, Ottawa Citizen
March 8, 2017

More than 20 per cent of the criminal cases at the Ottawa courthouse have been in the judicial system for 15 months or more, which puts them at risk of breaching the Supreme Court’s new limits on “unreasonable delay.”

Provincial statistics show that 1,066 Ottawa cases fell into that category at the end of 2016.

More than half (554) of those had been in the court system for at least 18 months, according to the Ontario Court of Justice Criminal Modernization Committee data.

The East Region — it stretches from Belleville to L’Orignal — had a higher percentage (15 per cent) of cases at-risk at the end of 2016 than any of Ontario’s seven judicial regions.

Delays at the Ottawa courthouse are among the worst in the East Region, with only Cornwall reporting a higher percentage (21.8 per cent) of cases at risk by virtue of being in the system for 15 months or more.

Brampton, the busiest courthouse in the province, had 16 per cent of its cases in the same at-risk category, while Toronto's Old City Hall — it deals with about as many cases as the Ottawa courthouse — had 19 per cent of its cases at risk.

The numbers released by the modernization committee represent the first detailed picture of the steep challenge posed to the local legal system by the Supreme Court of Canada's decision in R. v. Jordan.

In that ruling last July, the high court said that provincial court cases must be concluded within 18 months of a criminal being laid. Cases that stretch beyond that limit are "presumptively unreasonable," the court said, and violate an accused person's constitutional right to be tried within a reasonable time.

The Jordan decision also imposed a 30-month limit on Superior Court of Justice cases.

In Ontario, provincial court cases are dealt with by the Ontario Court of Justice, which handles the vast majority — about 98 per cent — of all criminal matters.

As a result, the impact of the Jordan decision will be felt most keenly in the lower court.

Crown attorneys are now scrambling to triage older cases while also competing for limited judicial resources — courtrooms, judges and per diem Crown attorneys — to move some forward at speed.
The East Region's senior Crown attorney, Curt Flanagan, recently conducted a "blitz" at courthouses across the region to review cases at risk, and to develop a strategy for dealing with them, the Citizen has learned.

Flanagan could not be reached to discuss the results of that review, but defense lawyers say it's clear that prosecutors will have to withdraw some charges and make deals on others to avoid having them thrown out of court for delay.

A spokeswoman with the Ministry of the Attorney General, Emilie Smith, said Crown attorneys are "proactively case managing those matters that may be at risk."

As part of its $25 million a year action plan, she added, the ministry has added resources to the system that allow prosecutors to conduct more judicial pre-trials to move cases forward. "And trial dates have also been moved up for at-risk cases so that they can be completed in a shorter time," she said.

In Ottawa, people accused of murder, fraud and sexual abuse have had charges stayed because of the Jordan decision during the past four months.

But the delay rulings are not automatic, and Ottawa judges have also rejected a handful of applications to have charges dismissed for unreasonable delay. Judges have to assess each case on its merits, the Supreme Court said, and deduct from the Jordan "ceiling" any delays that can be attributed to defence maneuvers or exceptional circumstances.

Last month, Attorney General Yasir Naqvi appointed three new judges to the Ontario Court of Justice in Ottawa. It followed an earlier announcement in which he unveiled measures aimed at streamlining the bail process.

Naqvi, MPP for Ottawa Centre, has also asked the federal justice minister to change the Criminal Code to eliminate preliminary hearings in all but the most serious criminal cases.

"The Jordan decision really changes the way we have to do things," Naqvi has said.

Anne London-Weinstein, president of the Defense Counsel Association of Ottawa, said she has already seen some of that change in local courtrooms. "Anecdotally, from my own experience, I sense that there's an urgency from the bench to get matters pushed forward," she said.

Crown attorneys, she said, have also been quick to produce disclosure materials, take positions and schedule pre-trial conferences.

"My hope is that Jordan is a spark for reform," she said, "because our system is in desperate need of a major overhaul."

Ottawa defense lawyer Lawrence Greenspon said he believes the Jordan decision will bring change.

"The Crown has been basically told the days of complacency regarding someone spending a year, two years, three years at the regional detention center waiting for trial, those days are over," said Greenspon, who represents Adam Picard, a former soldier whose first-degree murder charge was stayed in November because of unreasonable delay.

Picard spent more than four years in custody before his case reached trial.

"The reason I'm optimistic is because defense lawyers have been handed a tool to effect change on behalf of their clients," Greenspon said, "and we're collectively determined to use that tool to protect our clients' constitutional rights."

London-Weinstein said too many people are now held in pre-trial custody, too many accused are unrepresented by lawyers, and too many charges end up being dropped late in the judicial process.

Said Greesnpon: “The truth of the matter is you need more courts, more courtroom staff, more judges, more Crowns.”

Crown and defense counsel agree on the issue of judicial resources.

Writing in Canadian Lawyer magazine, the president of the Ontario Crown Attorneys Association, Kate Matthews, said the growing complexity of cases has made them more difficult to prosecute. “There has been a drastic increase in video evidence, computer and cellphone data and other forms of electronic and scientific evidence,” she said. “We used to measure cases by the number of boxes. Now we measure in terabytes.”

Crown attorneys, she said, must review all of that material, whether it’s for an assault case or murder charge. The sheer volume of evidence generates more pre-trial motions and longer trials.

“The truth is front-line Crowns are drowning under the weight of it,” she said.

Statistics collected by the province’s modernization committee highlight the situation Matthews describes.

The statistics show that one quarter of all the cases that went to trial at the Ottawa courthouse in 2016 took more than 18 months to reach a disposition. That number has climbed steadily since 2011 when only 14 per cent of criminal trials took so long.

New protocol encourages Alberta prosecutors to take plea bargains for serious crimes

Guidelines spell out how Crown should assess which cases proceed

By Roberta Bell
CBC News
Mar 08, 2017

The Alberta government's new "triage" protocol for cases in the strained justice system instructs the prosecution service to seek lesser convictions for serious charges in an effort to alleviate some of the pressure.

The nine-page document, obtained by CBC News on Wednesday, states that "running a trial of several weeks on a slim chance of obtaining a first-degree murder conviction when a plea to second-degree has been offered may not be an appropriate use of resources."

The new Prosecution Service Practice Protocol says the use of triage "reflects the gap between the resources allocated to the Alberta Crown Prosecution Service and the number of otherwise viable charges laid by the police.

"It is a measure born of necessity due to a combination of limited resources and increased demands on the justice system."

'Limited resources are now a factor'

James Pickard, president of the Alberta Crown Attorneys' Association, said in an email that the triage protocol is the first written direction the prosecution service has received "that places such an emphasis on resources in relation to our decision-making.

"What is clear in the triage protocol is that limited resources are now a factor to weigh on all files — even the most serious and violent."

The new protocol, introduced Feb. 27, first reiterates the long-standing principle of weighing case viability and determining the likelihood of conviction.

It emphasizes the importance of steering away from charges that aren't likely to go anywhere, explaining it frees up resources in the overtaxed system to focus on "serious and violent offences."

The second key component of the protocol includes more defined guidelines relating to early resolution — or plea bargains — including for serious and violent offences.

"We have a duty not only to the court to be efficient in our use of court time, but also to the public to ensure that resources are being used wisely," the document states.

Decisions should be based on law

Rick Woodburn, president of the Canadian Association of Crown Counsel, said to his knowledge, Alberta is the only province to enact such a document.

"Crown prosecutors should be independent and, ethically speaking, shouldn't be making choices based on the fact there's a lack of resources," Woodburn said.

"Our decision-making practice is based on the law and whether or not there is a reasonable prospect of conviction and whether or not it's in the public interest to proceed, but a budget concern is none of ours."

On Feb. 28, Edmonton's chief Crown prosecutor stayed 15 cases. Some of the charges in those cases were for violent offences, including assault.

The next day, the Alberta Crown Attorneys Association held a news conference during which the association announced it had stayed 200 charges since the beginning of the year.

Justice Minister Kathleen Ganley said the decision to prosecute will continue to be based on evidence.

"The triage protocol is explicit," she told the legislature. "Things will not be lost prosecutions merely because of timing, but prosecutors are empowered to make the decisions necessary to focus on serious and violent crime."

Ganley has said the government plans to put more money into the justice system to ensure long-delayed court cases do not continue to be dropped.

'Deeply concerning'

Progressive Conservative member of the legislature Mike Ellis, a former police sergeant, said he is appalled by the protocol, as he warned the government about a shortage of Crown prosecutors last year.

"We're talking about victims who are not going to be able to seek justice," he said. "And that is what is deeply concerning for me."

Edmonton defence lawyer Brian Beresh expects the protocol will only make a small difference.

He said the triage protocol is a poorly applied Band-Aid on a broken system in need of an overhaul. The overhaul would include a more rigorous vetting of cases before they enter the court and better access to legal aid.

"The last thing we want is a system of justice that rapidly runs people through the system and convicts the wrong people or convicts them of the wrong charges," Beresh said.

Before Justice Camp, these two judges were recommended for removal

The Globe and Mail
Mar. 09, 2017

Before Justice Robin Camp, the Canadian Judicial Council had recommended the dismissal of only two other judges. Both resigned before the House of Commons heard their cases.

Jean Bienvenue

Justice Jean Bienvenue of the Quebec Superior Court was the first judge the Canadian Judicial Council recommended to remove from the bench after an outcry about remarks he made during a murder trial.

The judge was presiding at the 1995 trial of Tracy Théberge, charged with murdering her husband, who had been left to bleed to death after his throat was slit with a razor blade.

When he saw that a lawyer had offered a tissue to a female juror who was crying, Justice Bienvenue told her, “Kleenex is a woman’s best friend.”

After the jury found Ms. Théberge guilty of second-degree murder, Justice Bienvenue met the jurors in their room, criticized them for failing to reach a verdict of first-degree murder and said he would ignore their recommendation for a 10-year sentence.

During sentencing, Justice Bienvenue talked about how women, “the noblest beings in creation,” could also “sink to depths to which even the vilest man could not sink.”

He compared the accused to infamous women such as Delilah, the Old Testament temptress who betrayed Samson; Salome, the woman in the New Testament who asked for the head of John the Baptist on a platter; and the First World War spy Mata Hari.

“At the Auschwitz-Birkenau concentration camp in Poland, which I once visited horror-stricken, even the Nazis did not eliminate millions of Jews in a painful or bloody manner,” he concluded. “They died in the gas chambers without suffering,.”

In a television interview afterward, Justice Bienvenue stood by his remarks, “which were thoughtful and carefully considered,” he said.

A former prosecutor, Justice Bienvenue was a Liberal provincial cabinet minister, handling portfolios such as education and immigration, before he was appointed to the bench.

He told the judicial council that “his ideas about women were taught to him by his mother 60 years ago and by a Jesuit teacher 50 years ago when he was in college.”

Paul Cosgrove

The second judge the Canadian Judicial Council formally recommended to be removed, in March, 2009, was Justice Paul Cosgrove of Ontario Superior Court, after a drawn-out, chaotic murder trial in which he appeared to side repeatedly with the defence.

A former Liberal federal cabinet minister and mayor of Scarborough, Ont., Justice Cosgrove oversaw the jury trial of Julia Elliott, a former masseuse accused of murdering and dismembering her ex-boyfriend, Larry Foster.

The jury heard evidence for only nine days before Justice Cosgrove allowed a series of procedural motions in which the defence claimed conspiracies in which police and prosecutors forged or destroyed documents.

During the two years of proceedings, Justice Cosgrove made more than 150 findings of misconduct by the Crown and police before he eventually stayed proceedings.

The Ontario Court of Appeal later ruled that the judge's findings typically were unfair and had no factual or legal basis.

An inquiry committee of the judicial council found that Justice Cosgrove incorrectly alleged that Ontario assistant deputy attorney-general Murray Segal was complicit in misleading the court without giving Mr. Segal an opportunity to respond.

The inquiry also found that the judge interfered with the work of Crown attorneys, meddled with an ongoing RCMP investigation, threatened Steven Foster, the son of the victim, with contempt of court then mocked his lawyer.

"Here I was at the murder trial of my father [and] I was maybe going to be going to jail before the perpetrator of the crime. It was insane," Steven Foster later told the judicial council.

In an apology, the judge said he had struggled to manage a challenging case. "I at times lost my way … I never acted in bad faith, but I now realize that I made a series of significant errors that affected that proceeding."

Alberta hiring 50 new Crown prosecutors, 30 support staff to deal with court backlogs

Alberta adding another $14.5 million to budget

Michelle Bellefontaine,
CBC News
Mar 09, 2017

The Alberta government plans to hire 50 Crown prosecutors and 30 support staff to deal with a chronic backlog in the court system that has prompted Crowns to stay charges and triage cases.

The overall investment is $14.5 million and will be part of next week's provincial budget, Justice Minister Kathleen Ganley said at a news conference Thursday.
"The steps we plan to take are vital for access to justice and our justice system as a whole," Ganley said.

The government was already hiring 15 Crown prosecutors before Thursday's announcement. The additional money means another 35 can be hired.
Ganley's announcement comes one day after a media report forced the government to release a triage protocol meant to guide Crown prosecutors on how to handle cases in light of severe court backlogs.

Wildrose Leader Brian Jean welcomed the increased funding but said the effects of the backlog will continue until all the new staff is hired and on the job.

"I'm very concerned about the next six months to a year and how many people, how many criminals, are going to be walking the streets without being prosecuted as a result of lack of resources," Jean said.

Progressive Conservative MLA Mike Ellis, a former Calgary police sergeant, called the extra funding a positive first step but said a refusal to fund Crown prosecutors in the past has led to stays in 200 cases.

He said the government is reacting and not leading.

"It is absolutely disappointing to know that this government needed a public outcry … to actually do the right thing," Ellis said.

Judges needed too
The nine-page protocol, dated Feb. 27, instructs prosecutors to focus on cases that have a better likelihood of conviction and seek lesser charges in other cases to reach an early resolution.

The protocol is set out as a way for Alberta prosecutors to deal with a backlog of cases that became worse following a Supreme Court decision in the Barrett Jordan case that sets deadlines for when matters should go to trial.

Court of Queen's Bench case trials must now be concluded within 30 months, and provincial court matters within 18 months, with an extension to 30 months if the case includes a preliminary inquiry.

The issue came to a head late last month after Edmonton's chief Crown prosecutor stayed charges in 15 cases, including charges for violent offences.

The Alberta Crown Attorneys Association revealed the next day that 200 charges had been stayed since the start of 2017.

Ganley said there were already backlogs in the system when she became justice minister in May 2015.

The Jordan decision made things worse, she said.

A hiring freeze has created a shortage of Crown prosecutors and court clerks. Alberta is also struggling with a shortage of superior court judges, who are appointed by the federal government.

Ganley said Alberta has the lowest per-capita number of federally-appointed judges in the country.

Alberta has 310 Crown prosecutors. Ten were hired to conduct justice of the peace hearings after a man with a long record of violent crime was released on bail and later shot and killed RCMP Const. David Wynn in St. Albert.

Members of the opposition said the government's triage plan sends the wrong message to criminals, who think they can get away scot-free, and to victims who feel they no longer have an opportunity to seek justice.

Courts shaken by search for solutions to delays

A heretical idea is gaining traction as lawmakers seek to overhaul an unwieldy system: Maybe the justice system cannot do everything. Maybe it cannot prosecute every crime, **Sean Fine** reports

The Globe and Mail

Mar. 12, 2017

Barrett Jordan sold hard drugs as if they were pizza. Customers in Surrey and Langley, B.C., could phone in, place an order for cocaine or heroin, and a delivery person would come to their door. The Mounties made six phone calls in seven months, then showed up at his own door, finding drugs, cash and a work schedule for his delivery staff. He was charged with possession for the purpose of trafficking in December, 2008.

His appeal on the grounds of unreasonable delay, known as R. v. Jordan, is now sending tremors through the Canadian legal system. A simple enough crime, it took more than four years to prosecute. The Supreme Court of Canada used that delay to try to fix more than a quarter-century of snail's-pace justice.

It was not the first time the Supreme Court had tried to rein in an unwieldy system. The first time was a catastrophe. In 1990, the court set unrealistic time guidelines in its decision in a delay appeal case known as R. v. Askov, and within a year, judges threw out 47,000 charges against 25,000 people in Ontario alone. (In a subsequent case, the court softened the guidelines, and the courts went back to business as usual.)

The Supreme Court did not want to turn the system upside down again. Its July, 2016, ruling in the Jordan case set deadlines of 18 months for trials in provincial court, and 30 months in superior court – but offered an argument called a "transitional exceptional circumstance" in the hope of preventing another Askov situation for cases already in the system. In a case of delay, prosecutors could argue they were operating under the rules that were in force when the charge was laid. Reasonable delay was not meant to become unreasonable overnight.

After the ruling, all hell broke loose.

The Supreme Court had upped the ante: It said the seriousness of a crime does not matter in decision on whether a delay is reasonable. Society's interest in having a serious crime prosecuted could no longer be weighed. Even murder charges could fall.

And they did. Just four months after the ruling, two men, one in Alberta and one in Ontario, had been freed from charges of first-degree murder because of delay – the transitional exceptional circumstance argument did not succeed. It was the system's nightmare, and worse might be ahead. In Ontario alone, 6,500 cases in Provincial Court were beyond the 18-month threshold, of which 38 were homicide or attempted murder.

As the search for solutions begins in earnest, the justice system is being shaken to its foundations. Alberta prosecutors dropped 200 cases in two months to make sure no more murder cases fall by the wayside. In Manitoba, the chief justices of three levels of court and the province's Attorney-General proposed an experiment to dispense with preliminary inquiries – a

bulwark of the system. In Nova Scotia, best-offer plea bargains are to be the norm in low-level cases, and possibly in mid-level cases soon, in a collaboration of the judiciary, prosecution, police and defense.

Policies such as mandatory minimum sentences, 60 of which were created by the former Conservative government, are no longer debated primarily on philosophical grounds. The federal Liberal government sees them now as unaffordable because they make plea bargains difficult, and lead accused people to fight to the end.

And a heretical idea is gaining traction: Maybe the justice system, like health care, cannot do everything. Maybe it cannot prosecute every crime.

For full report:
http://www.theglobeandmail.com/news/national/courts-shaken-by-search-for-solutions-todelays/article34275019/

'You're free to go' — Crown stays murder charge against Jeffrey Killiktee

Weeks before trial, Crown says conviction unlikely due to concerns over reliability of star witness
Nick Murray,
CBC News
Mar 10, 2017

A Pond Inlet man who was accused of murdering 43-year-old Charlie Angnetsiak in September 2014, walked away a free man on Thursday.

In court in Iqaluit, Crown prosecutors informed Justice Sue Cooper they no longer had a reasonable prospect of convicting Jeffrey Killiktee and stayed the second-degree murder charge against the 27-year-old.

The development comes less than a month before a four-week trial was set to start. The Crown's case hinged largely on the testimony from a single witness.

But prosecutors told the court on Thursday they had recently spoken to their witness in preparation for the trial, and suddenly had concerns about his reliability.

"This witness has provided information to the Crown that makes us question the reliability of his previous statements to the RCMP as well as the evidence he provided at the preliminary hearing," prosecutor Abel Dion told Justice Cooper.

"Given the new information provided by this critical witness, the Crown no longer holds a reasonable prospect of conviction."

The murder charge stemmed from a 2014 house party in Pond Inlet, where Angnetsiak was found dead the next morning. Soon after, Killiktee was arrested and charged. He has been in jail awaiting trial ever since.

Killiktee's lawyer, Alison Crowe, said there were concerns with the Crown's star witness from the beginning.

"Right off the bat he admitted he was blackout drunk," Crowe told CBC News. "It was a party, so a lot of people were there at different times."

During the preliminary inquiry, Killiktee's defence had also raised the possibility of a second suspect. That person has since died.

Preliminary inquiry has merits, Crowe says

Crowe also said without the preliminary inquiry, Killiktee likely wouldn't have walked away a free man.

Her comments come in the wake of controversial efforts in Manitoba and Ontario to get rid of preliminary inquiries to alleviate court backlogs and ensure an accused's right to a speedy trial.

"They say the Crown gives disclosure. That's written statements from witnesses. But statements don't equal what a witness will say in live time, and they don't reflect what cross-examination might reveal," Crowe said.

"Just on the basis of statements, the Crown would have not discontinued these proceedings. [They did], because they had a chance to look at the strength of their own witnesses."

B.C. courts' 'culture of timeliness' on cases can be a lesson to other provinces

Sunny Dhillon

The Globe and Mail
Mar. 12, 2017

B.C. courts were in disarray.

In 2011, 122 cases were thrown out of the province's courts due to excessive delays. The failed prosecutions ran the gamut from assault and drug files to an incident in which a man was accused of willfully shooting a puppy.

But as other provinces grapple with a Supreme Court of Canada ruling from last summer that set strict time limits on conducting criminal trials – Alberta has already stayed charges against 200 people, and Manitoba and Ontario have taken aim at preliminary inquiries – B.C. has been relatively quiet, despite the fact the high court ruling stemmed from an arrest in the province.

The silence, government officials and legal observers say, is because B.C. is not expected to be hit as hard by the ruling in R v. Jordan as other jurisdictions, partly because of measures that were introduced after the wave of dismissals in 2011. The Jordan ruling set deadlines of 18 months for trials in provincial court, and 30 months in superior court.

Last year, the province says, the number of prosecutions dismissed due to delay in B.C. dropped to 19. This year, there have been five such stays.

Though a surge of dismissals is not expected, one B.C. lawyer who spoke with the Globe expressed concern about the heightened focus on speed and its possible effects, while another said the measure that's had the greatest impact on caseloads has been the province's controversial 2010 decision to move impaired-driving files out of court to an administrative tribunal.

What lessons, if any, B.C. can offer other provinces shaken by the Jordan ruling remains to be seen.

In February, 2012, with the province under fire due to the dismissals and shows of frustration from judges, B.C. Premier Christy Clark announced a justice-system review. The review was led by Geoffrey Cowper, a senior lawyer with Fasken Martineau.

Mr. Cowper's report was released in August of that year and he said B.C.'s justice system would have to transform a "culture of delay" to a "culture of timeliness." He made dozens of recommendations primarily aimed at reducing delays and backlogs.

In an update to his report, released this past October, Mr. Cowper said B.C. courts have seen a change. He said the number of cases pending in B.C. for more than 18 months declined from approximately 4,850 in March, 2012, to about 1,700 in March, 2016.

Speaking of the Jordan case, which originated in this province, Mr. Cowper wrote: "B.C. is well prepared to meet the new requirements for timeliness."

He said the improvement could be tied to several factors, including a backlog reduction project and early case resolution. A B.C. Ministry of Justice spokesperson said the Crown also reduced the number of prosecutors who deal with a single file, and instituted online charge assessment. The spokesperson went on to mention the immediate roadside prohibition program, which diverted thousands of impaired-driving cases away from the courtroom and two years ago survived a Supreme Court of Canada challenge.

Daniel McLaughlin, spokesperson for B.C.'s Criminal Justice Branch, said the Crown in this province has not implemented any policy changes as a result of the Jordan ruling.

"The branch is of the view that B.C.'s Prosecution Service is reasonably well-positioned to withstand the impact of the decision in R v. Jordan for the majority of cases," he wrote in a statement.

Mr. McLaughlin said the reforms that were put in place were designed to reduce the number of court appearances and time to trial. He said recent data indicate there have been "small but significant gains" in those areas.

Kevin Marks, president of the BC Crown Counsel Association, in an interview said B.C. does appear to be in a better position than other jurisdictions, though the Jordan ruling is still relatively new.

Michelle Daneliuk, a Victoria defence lawyer and co-chair of the criminal defence committee of the Trial Lawyers Association of B.C., said she has heard anecdotally over the past few months that there is a real focus on moving cases ahead "with some considerable speed in order to … avoid the implications of the Jordan decision."

"What I'm concerned about with respect to Jordan and the application of Jordan in our court system is not so much that there will be large groups of cases that are stayed by the Crown as a result of this, but that when courts are considering things such as adjournment applications – which can be brought for perfectly legitimate reasons – there will be an impact on the success of those applications because courts will be bearing in mind constantly that they have to be concerned about ultimate delay in a case," she said in an interview.

Ms. Daneliuk said she's aware of two recent cases in which adjournment requests brought by the defence were not granted until it was clearly stated on the record that the delays would be attributed to the accused. The adjournments were ultimately granted, she said.

"There's this tension I think now between having a trial within a reasonable time and having a fair trial. And those are two separate Charter rights, but there's no hierarchy within the Charter as to which right supersedes the other," she said. "And I'm just concerned that this push to have trials within a reasonable time is going to potentially impact on the right of an accused to a fair trial."

While the province and the Crown credited several different initiatives with reducing dismissals, Paul Doroshenko, a Vancouver defence lawyer who focuses on impaired-driving cases, said the biggest factor was the shift in the handling of such cases.

"The fact is the [immediate roadside prohibition] scheme is the one thing that's had the biggest impact on the caseload before Crown Counsel offices," he said in an interview.

Under the immediate roadside prohibition program, a person who is found to be impaired can immediately be prohibited from driving, have their vehicle impounded and face heavy fines. In the 2015 Supreme Court of Canada case, drivers argued the program denied them the right to the presumption of innocence and other protections.

Mr. Doroshenko said B.C. used to see about 6,500 people charged with impaired driving each year. Those cases would almost always take at least a day of court time, he said.

"All of those cases disappeared from the court system because everybody just gets an immediate roadside prohibition now," he said.

Michael Welsh, president of the Canadian Bar Association, B.C. Branch, in an interview said he had not studied the effects of the Jordan ruling in great detail but was concerned about resources in the B.C. justice system. He noted two drug cases in Victoria were last month dismissed because of a lack of sheriffs.

Mr. Welsh's association has also called for increased funding to legal aid.

A Provincial Court report said that as of late February the court had 128 full-time judges. The court had 126 full-time judges in September, 2010, when it issued a report titled Justice Delayed and warned it could not "keep pace" with the new cases being presented.

The Jordan ruling stemmed from the case of Barrett Jordan, a Metro Vancouver man who was charged with possession for the purpose of trafficking in 2008. His case took more than four years to prosecute and, last July, the Supreme Court of Canada threw out his convictions and set the new case time limits.

Just four months after the ruling, two men, one in Alberta and one in Ontario, had been freed from charges of first-degree murder because of delay. In Ontario alone, 6,500 cases in Provincial Court were beyond the 18-month threshold, of which 38 were homicide or attempted murder.

By early this year, criminal-defence lawyers had applied for stays in 800 criminal cases, with the highest number – 514 – in Quebec, according to a Globe and Mail survey of attorneys-general.