



ENGAGEMENT • SUMMER 2017

## Getting fair outcomes for victims in Canada's criminal justice system

### Administration of Justice Offences

#### What are administration of justice offences?

Administration of justice offences are a specific type of violation of the law, mostly committed when pre-trial conditions or sentences from a previous conviction are disobeyed. This includes failures such as not complying with conditions of release, not appearing in court, and disobeying a court order.

#### What is the federal government doing on this issue?

- > According to testimony before a parliamentary committee in 2016, the Department of Justice Canada and some provinces and territories have been exploring alternatives to laying a criminal charge for an administration of justice offence.<sup>1</sup>
- > As announced in April 2017, Federal-Provincial-Territorial (FPT) Ministers Responsible for Justice are including administration of justice offences as a criminal law reform priority.<sup>2</sup>

#### Considerations

- > In 2014-15, there were almost 75,000 administration of justice cases in adult criminal court, representing 23 percent of all cases.<sup>3</sup>
- > Costings prepared by the Department of Justice Canada in 2009 estimated the total annual system costs of these violations to be approximately \$730 million.
  - This estimate includes the costs of policing, prosecution, legal aid, courts, and corrections, however does not account for costs to victims (e.g. health care, productivity losses, legal counsel, support services).<sup>4</sup>

- > Some administration of justice violations can be linked to issues faced by marginalized or vulnerable populations in the criminal justice system. For example, Indigenous peoples in remote communities may be unable to get to a distant town where the court is located, and may therefore face a disproportionate number of failure to appear breaches.<sup>5</sup> As these types of charges significantly add to an accused person's criminal record, some research concludes that these kinds of violations can be considered a factor linked to the over-representation of Indigenous peoples in the criminal justice system.<sup>6</sup>
- > A high proportion of court time is being used to deal with administration of justice charges laid after the breach of conditions from an initial offence involving no harm to a victim (e.g. failure to appear in court). For this reason, some advocate that administration of justice offences should allow for diversion into supportive programs instead of being introduced as new criminal charges before the court.<sup>7</sup>

#### Ideas for change

- > Enable police to bring those breaching bail conditions or probation orders directly back to court to determine why the breach occurred.<sup>8</sup> If there's a reasonable explanation for not complying (e.g. a change in employment keeping the released person from reporting to a peace officer at required times), the court could review and amend conditions to ensure that they are appropriate and reasonable.
- > Canada's current *Youth Criminal Justice Act* requires police to consider providing a warning, a caution, or referral to a support program as an alternative to laying charges. Requiring police to consider such alternatives for adults – especially those belonging to vulnerable populations – could provide an opportunity to direct some administrative offences away from the courts and towards support services better suited to

address situations involving addictions, mental health, and other socio-economic factors.

- > Ensure that victims are informed of conditions placed on an accused or sentenced person, and that they be notified whenever there is a breach.
- > Inform victims if and when conditions are modified.
- > Give victims the ability to apply to the court for changes to conditions necessary to ensure their safety and security.

### More about administration of justice offences

#### Conditions protecting victims

There is a difference between conditions which are meant to assist the accused prior to the hearing of the case on the merits and conditions meant to address safety and

security of a victim, or society in general. Any discussion suggesting that an accused person should not automatically face new charges for breaching bail conditions needs to make a clear distinction between conditions meant to address the accused's own needs and those meant to address the safety and security of a victim.

#### Security and safety for victims

When linked with crimes involving assaults and violence, administration of justice charges can arise if an accused person breaches bail conditions intended to ensure the safety and security of victims or witnesses. These types of additional charges are taken into account in further proceedings, providing an added opportunity to put necessary conditions in place to ensure the security and safety of victims, or alternatively, to justify detention of the accused. Such charges can also be laid against a convicted offender if they breach probation or parole conditions.

#### ENDNOTES

<sup>1</sup> Canada, Parliament, House of Commons, Standing Committee on Justice and Human Rights, *Panel on the Trends in the Criminal Justice System*, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session, JUST No. 2, 23 February 2016, p. 2.

<sup>2</sup> News release – Justice Ministers make progress on key issues related to delays in the criminal justice system, *Canadian Intergovernment Conference Secretariat*, 28 April 2017, <http://www.scics.ca/en/product-produit/news-release-justice-ministers-make-progress-on-key-issues-related-to-delays-in-the-criminal-justice-system/>.

<sup>3</sup> Statistics Canada, *Jordan: Statistics Related to Delay in the Criminal Justice System*, April 2017, consulted July 2017, <http://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2017/apr01.html>.

<sup>4</sup> Department of Justice Canada, *The Justice System Costs of Administration of Justice Offences in Canada, 2009*, Research and Statistics Division, January 2013.

<sup>5</sup> Canada, *Panel on the Trends*, p. 8.

<sup>6</sup> Mylène Magrinelli Orsi and Sébastien April, *Administration of Justice Offences Among Aboriginal People: Court officials' perspective*, Department of Justice Canada, 2013.

<sup>7</sup> Standing Senate Committee on Legal and Constitutional Affairs, Senate of Canada, *Delaying Justice is Denying Justice: An urgent need to address lengthy court delays in Canada (Final report)*, June 2017, pp. 138-141.

<sup>8</sup> Canada, *Panel on the Trends*, p. 7.