



Brief on Bill C-75, An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts

The Association of Justice Counsel (AJC) is grateful for the opportunity to comment on *Bill C-75, An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts*.

WE ARE DISAPPOINTED WITH THE PROPOSED BILL, WHICH WILL NOT REDUCE DELAYS

We appeared before the Standing Committee on Justice and Human Rights (JUST) of the other place on September 25, 2018 to express our concerns about this proposed Bill. While a number of amendments have been made to the Bill since that time, we remain disappointed with the Bill overall, not for what it does, but for what it fails to do. It may improve some aspects of the criminal justice system, but it is not the long-awaited answer to the SCC Jordan ruling – and will not reduce delays.

OUR MEMBERS WORK ON CRIMINAL LAWS AND IN THE CRIMINAL JUSTICE SYSTEM

The AJC is the bargaining agent for more than 2,600 lawyers employed by the government of Canada, including those who work for the Public Prosecution Service of Canada (PPSC), and the Department of Justice (DOJ). The AJC works collectively to improve the working conditions of members and to raise public awareness of the crucial work our lawyers do for the benefit of all Canadians.

Canada's Crown counsel work tirelessly for Canadians in pursuit of enhancing the administration of justice. We serve the public and play an important role in protecting public interest, promoting justice, and keeping Canadians safe. We help the government enforce laws in a way that protects Canadians' rights. We also give back to our communities through pro bono and other volunteer work.

Our members include the lawyers who provided policy advice on this Bill, and those who drafted it. To be clear, we are challenging the substance of this Bill and not the competency of their work.

This Bill will affect the work of federal prosecutors employed by the PPSC who prosecute acts of terrorism, organized crime, human trafficking and environmental pollution, as well as criminal offences in Canada's North. Notably they have carriage of most of the nation's drug prosecutions.

Federal prosecutors are highly committed to the system in which they work and have a stake in the effectiveness of the criminal justice system. Together with the Standing Senate Committee on Legal and Constitutional Affairs we are deeply concerned about the issue of delays in criminal courts.

THIS BILL DOES NOT REDUCE DELAYS

The AJC anxiously awaited the results of the post-Jordan consultations, and the announcement of Minister Wilson-Raybould's "answer to Jordan" in introducing this Bill.

Unfortunately, this Bill does not actually provide the much-needed help for federal prosecutors and their cases. As testified to previously, practitioners on both sides of the table do not believe that there will be a measurable impact on trial delays. Changes to the bail system as well as jury selection, and the



creation of yet another process – judicial hearings for administrative offences – are unlikely to reduce delays significantly. Our experience is that these types of offences do not really contribute to delay.

Even if convinced otherwise, these measures largely do not apply to federally prosecuted cases. For example, most drug offences carry maximum life sentences, and therefore are entirely untouched by the proposed changes relating to preliminary inquiries and hybridization.

FEDERAL PROSECUTORS ARE IN CRITICAL NEED OF RESOURCES

A recurring concern raised by witnesses in the Committee’s report, ‘Delaying Justice is Denying Justice: An Urgent Need to Address Lengthy Court Delays in Canada’, was that the criminal justice system has been underfunded for far too long, and that the problem of delays cannot be addressed until it is sufficiently resourced.¹ Indeed, the Committee recognized that, “*all jurisdictions in Canada need to ensure that more resources are put into the justice system.*”

The Supreme Court highlighted the importance of resource issues in reducing delay in the Jordan decision in 2016, stating, “*we are aware that resource issues are rarely far below the surface of most s. 11 (b) applications... [T]he new framework implicates the sufficiency of resources by reminding legislators and ministers that unreasonable delay in bringing accused persons to trial is not merely contrary to the public interest: it is constitutionally impermissible, and will be treated as such.*”²

Federal prosecutors are deeply concerned about the ability of the current criminal justice system to handle the strain, and many of us feel like we are heading towards a cliff.

In the wake of the Supreme Court of Canada’s (SCC) decision in *R. v. Jordan*, while other Attorneys General in provincial jurisdictions, such as Ontario and Alberta, responded by hiring additional prosecutors, the PPSC did not.³ In fact, in 2018, the PPSC faced a budget shortfall, and most regional offices had been told to cut their budgets by 7.5%. Although additional funding was finally obtained to bring the operating budget back up to existing levels, not only were additional funds not provided but a lot of damage had already been done.

This shortfall is reflected in the 2018 Public Service Employee Survey results for PPSC⁴. The results show that only 54% of respondents can complete their assigned workload during their regular working hours and only 50% of respondents describe their workplace as being psychologically healthy. Respondents identified the most significant causes of stress at work to include ‘not enough employees to do the work’, ‘heavy workload’ and ‘work-life balance’. This is clearly unsustainable. The PPSC needs the opposite of hiring freezes and staffing cuts – prosecutors need help so that they can do their jobs properly.

¹ See Standing Senate Committee on Legal and Constitutional Affairs, *Delaying Justice is Denying Justice: An Urgent Need to Address Lengthy Court Delays in Canada (Final Report)*, (June 2017), available [online](https://sencanada.ca/content/sen/committee/421/LCJC/reports/Court_Delays_Final_Report_e.pdf) (https://sencanada.ca/content/sen/committee/421/LCJC/reports/Court_Delays_Final_Report_e.pdf).

² *Supra* note 1 at para. 117.

³ See *R. v. Jordan*, 2016 SCC 27, available [online](https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16057/index.do) (https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16057/index.do).

⁴ See Treasury Board of Canada, *2018 Public Service Employee Survey Results for Public Prosecution Service of Canada*, available [online](http://www.tbs-sct.gc.ca/psees-saff/2018/results-resultats/bq-pq/46/org-eng.aspx) (http://www.tbs-sct.gc.ca/psees-saff/2018/results-resultats/bq-pq/46/org-eng.aspx)



While we acknowledge that increasing resources alone will not fix the delays, it is an aspect of critical importance that has been largely ignored. It is clear that urgent action is needed - and yet, there has been nothing done by the government to address these resource issues to date. Other than rectifying the critical shortfall, there is no relief in the latest budget, 'Investing in the Middle Class', tabled in the other place by the Minister of Finance on March 19, 2019.⁵

OUR RECOMMENDATIONS

The AJC is disappointed with Bill C-75, which will not significantly reduce delays in the Criminal Justice System. It has been 30 years since we have been warned of the need for change by the Supreme Court of Canada, and prosecutors are among those who most severely bear the brunt of the system being overtaxed.

We were very hopeful that help was on the way, but this Bill does not deal with the most serious problems. The increasing complexity of the criminal law, the cumbersomeness of the criminal procedure, and the underfunding of the system, need to be addressed. Until such time, things are not going to get better. In fact, they are getting worse.

Immediate improvements are required. We urge the Senate Committee to help ensure that reforms to the criminal justice system to reduce delays continue to be a top priority, and that adequate funding is provided to the Public Prosecution Service of Canada to support Canada's federal prosecutors in the furtherance of the administration of justice. The tough work on delays is not done, it has not really even started.

⁵ See Department of Finance Canada, *Investing in the Middle Class, Budget 2019*, available [online](https://budget.gc.ca/2019/docs/plan/budget-2019-en.pdf) (https://budget.gc.ca/2019/docs/plan/budget-2019-en.pdf).