

Senator Joan Fraser
Chair
Senate Standing Committee on Legal and Constitutional Affairs
The Senate of Canada
40 Elgin Street, Room 1057
Ottawa, Ontario
K1A 0A4

September 24, 2009

Dear Chairperson:

Re: Supplementary Submission of the CACC

On behalf of the CACC, let me thank you again for the opportunity to appear before the Senate Standing Committee on Legal and Constitutional Affairs on September 16, 2009. On reflection of the issues discussed at the hearing on Wednesday evening I would like to provide a supplementary submission on behalf of the CACC regarding two issues: 1) the “myth” of accused persons “building credit” while awaiting trial in custody, and: 2) the issue of what prime steps should be taken to unclog the courtrooms.

In the testimony of the CLA and the CBA, the very existence of an accused person building credit for sentencing under our current sentencing provisions (which allow enhanced credit for pre-trial custody up to a ratio of 3:1) was vigorously denied. With great respect, the CACC cannot agree with such submissions. This concept and conduct is not mythical, nor is it rare in the experience of crown attorneys across Canada. Indeed, in *R v Thornton* [2007] O.J. No. 1865, para. 32 (Ont.C.A.), the Court of Appeal implicitly rejected the kind of manipulation of the timing of guilty pleas that enhanced credit ratios can encourage in certain circumstances. We are of the view that the controversy between our organizations is really centred upon how often the incentive to delay a trial or guilty plea is effective in the decision making of an accused person – not on whether or not the incentive is real.

Regarding the issue of what prime steps are necessary to unclog the courts, the fundamental problem is that the Canada’s administration of justice has been underfunded for decades and at the same time that the length, complexity and volume of its cases have increased. As discussed, the workload of the criminal justice system outstrips its capacity in all areas of the country as a whole and in variable degrees of distress

regionally, depending on sector: police, crown, defence, courts, judiciary, probation and parole and corrections. The situation is exacerbated by the obstacle created by the constitutional division of responsibility between writing criminal law and funding the administration of justice between the Federal and Provincial governments. Federal/provincial cooperation and coordination are absolutely essential to effective solutions for what ails our administration of justice.

The CACC views the administration of justice as a core piece of the infrastructure of Canadian society – as important as health care, education, roads and bridges. In many ways our justice system is the measure of the quality of Canadian society and a fundamental foundation of its success domestically and externally. Unfortunately, the administration of justice has not been seen as a spending priority, despite the relatively miniscule proportion it occupies in Federal and Provincial budgets. This mindset must change. Continued chronic neglect will not only result in a loss of public confidence in the justice system but serious public safety issues and very public miscarriages of justice.

Yours truly,

James Chaffe
President
CACC/ACJE