

Courts in crisis [part 1 of Justice Denied series]

A drunk driver with his young son in his car nearly hits two police officers and a bystander at the side of the road in Prince George, but is not held accountable for his actions.

A hunter from Merritt is caught poaching protected big horn sheep near Williams Lake, yet never faces consequences.

A Victoria-area man shoots a puppy belonging to a 12-year-old cancer survivor, is charged with animal cruelty, and ultimately goes unpunished.

These are real cases recently thrown out of court in B.C., allowing those accused of crimes to walk free. The reason? Unacceptable delays stemming from chronic provincial government underfunding of the legal system, including courts, judges, prosecutors, support staff and legal aid.

An estimated 2,000 additional criminal cases still stuck in the system have already been delayed so long, they are at risk of being thrown out as well. And there's no end in sight.

So clogged are the courts - particularly in Surrey - that judges are increasingly outspoken in denouncing the logjam and lack of resources that threaten the integrity of the entire system.

"The backlog is so great and the courts so crowded that in many cases there will be an unreasonable delay should there be even one adjournment on a trial date," warned Surrey Provincial Court Judge Peder Gulbransen last November, as he threw out the prosecution of an impaired driver who waited 32 months for a trial date.

"Justice delayed is justice denied," ruled Judge Ronald Webb last year, in staying the case in Cranbrook against an accused cocaine dealer who waited more than two years for a trial expected to take just three hours.

Another troubling example is that of an alleged child rapist in Coquitlam whose trial never went ahead because the system apparently couldn't afford to translate victims' statements quickly enough so the accused could understand them. Police requests for funding for the translations had been denied and the trial was repeatedly delayed.

"It is very disturbing that the value of the complainants' sexual, physical and emotional integrity is less than the cost of translation and transcription," Judge Marion Buller Bennett ruled last year.

She ordered the multiple charges of assault, assault with a weapon, sexual assault, incest and sexual touching of a young person be dropped after a two year wait.

The judge called it "a tragedy" for all, including the accused - a man who was publicly identified but had no chance to clear his name.

The case is now being reviewed by B.C. Representative for Children and Youth Mary Ellen Turpel-Lafond, who called it a "very grave" situation. "I'm very concerned about these delays," she said in an interview.

"You can see the alarm bells being raised in multiple places in British Columbia in the court system."

But judges' hands are tied.

They are bound by Supreme Court of Canada rulings that firmly limit how long cases can be prolonged before the constitutional right of the accused to a fair trial has been violated and a stay of proceedings must be entered.

Defence lawyers can't deliberately drag their feet to get a case tossed.

In deciding a delay is unacceptable, judges count only the slowdowns attributed to the system itself or Crown-requested adjournments. They must also conclude the defendant was harmed in some way by the wait.

But B.C.'s case backlog now leaves virtually no room for any kind of error that could cause delay.

Some cases are quashed after as little as 14 months, and the applications become much harder for the Crown to fend off when the accused has waited more than 18 months.

In Surrey, a typical one-day impaired driving trial is now being set for July of 2012 - an immediate 16-month time period that puts the case close to the cusp of being tossed from the start. Year-long-plus delays from the outset are now common at many courthouses around the province. The judges themselves tabled a damning report last September titled "Justice Delayed" that warned "thousands of cases are at risk" of being dropped due to too much time elapsing between charges being laid and an accused's day in court.

At that time, there were 17 fewer provincial court judges on the bench than in 2005 - a 12-per-cent decrease.

B.C. is the only province in Canada where the number of sitting judges decreased over that period, despite a growing population, rising caseload and increased complexity of many trials.

Coupled with inadequate numbers of Crown prosecutors, court clerks and sheriffs, the report said, the available court time to handle cases is down significantly and is unable to keep pace with the rising demand.

In Surrey alone, the report said, it would take three more full-time judges hearing criminal trials for two years to reduce wait times to acceptable levels.

Since those findings, there's little sign of improvement.

Six new judges have been appointed since October 2010, but others retired so the net increase is just two positions.

Front-line prosecutors, lawyers and court staff believe that's insufficient to stop the deterioration of the system.

"The situation has gotten worse, undeniably," said Samiran Lakshman, president of the B.C. Crown Counsel Association. "It's becoming more dire as the days go on."

Despite the extra judges, the number of adult criminal cases older than 18 months in the system climbed from just over 2,000 last fall to more than 2,100 by February, 2011.

Trials aren't just lined up far into the future but also stacked three and four deep on the same day - dates that Judge Webb called "hopelessly overbooked." Staff shortages aren't the only problem. Physical courtroom space is in short supply in many areas, a result of the government's 2002 decision to close 24 courthouses, including ones in Delta, Burnaby, Hope, Maple Ridge and Squamish, increasing the load on neighbouring courts.

Major criminal trials involving organized crime - such as the "Surrey Six" murders or the UN Gang prosecution - aren't expected to be lost to delay.

But Lakshman warns time-intensive mega-trials suck up vast amounts of resources for courts, police and prosecutors, leaving less time to dispense justice for more run-of-the-mill criminals.

He argues any money saved by the province through justice system austerity is a false economy, considering the money blown bringing accused criminals to court but not quite to trial.

Cases are being terminated after police have conducted a full investigation and submitted charge recommendations. After Crown has read the file and approved charges. After charges have been sworn in court. And after many appearances before a judge, prosecutor, clerk and sheriff - often with various witnesses waiting to testify.

"It's a complete waste of money," Lakshman said. "It adds lunacy on top of a ridiculous situation."

Following a B.C. government-imposed hiring freeze, the number of sheriffs in this province has dropped by almost 20 per cent in recent years, forcing some judges to close court sessions.

Last January, three judges in Victoria cancelled the day's agenda because there were not enough deputy sheriffs on hand.

"This isn't the first time that's happened. It's happened in Nanaimo, it's happened on other occasions," said Dean Purdy, chair of Corrections and Sheriffs Services Component of the B.C. Government Employees Union.

"Courts are being delayed and justice is being delayed."

Over the past few years, Purdy says a hiring freeze has been invoked by the province, causing a 17-per-cent drop in the number of available sheriffs in B.C., from 520 to 430.

Because of that, vacancies in court are being filled with corrections officers for extra security. In three separate courthouses in the Fraser Valley, where there are high-security gang trials being held, Purdy said they've had to bring in corrections officers to provide back-up in court.

"They're just getting by the skin of their teeth," Purdy said. "Delays in our already crowded courtrooms is a problem. They're already backed up enough and adding to that is just an ongoing problem."

B.C.'s Criminal Justice Branch has since hired 24 auxiliary sheriffs, but Purdy said there will have to be more.

Court cases are becoming more complicated and more dangerous, particularly with the number of accused gangster trials coming up.

The union has been calling for metal detectors at each of the courtrooms, as is done in Alberta. Purdy also estimates another 50 to 100 sheriffs will be needed to keep court proceedings moving. That would require an annual investment of about \$5 million.

While there's been no firm commitment, the fact judges are shutting down proceedings due to the absence of a sheriff has the government's attention, Purdy said.

"Nothing was done until we reached the critical point we're in now."