THE PROVINCIAL COURT
OF BRITISH COLUMBIA

BACKGROUND INFORMATION FOR JOURNALISM STUDENTS ON THE RULE OF LAW AND THE PROVINCIAL COURT OF BRITISH COLUMBIA

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CONTENTS **PAGES**

1. INTRODUCTION

Journalists and judges of the Provincial Court of British Columbia, through its Community Engagement Committee, believed that it would be useful for journalism students to have the opportunity to meet with a judge and journalist to discuss principles such as the Rule of Law and separation of powers, how the court functions, what judges do on a daily basis and why, and how journalists may access information to enhance responsible reporting.

The following material, intended as background reading for a presentation by a judge and journalist, has been compiled by Judge Justine Saunders with the help of Gene Jamieson, Legal Officer to the Chief Judge, and Joey Thompson, former Legal Editor of the Province newspaper and a veteran journalist with a background in legal education. The material was updated in 2011 by Judge Ann Rounthwaite, Judge Saunders, Gene Jamieson and Andy Chow, a UBC Judicial Intern and updated in 2013 by Judge Rounthwaite and UBC Judicial intern Rebecca Stanley. The goal is to bring students a judge's view from the bench, contrast it with a working journalist's perspective, and engage students in discussion about the legal system in British Columbia.

2. WHAT BRITISH COLUMBIA PROVINCIAL COURT JUDGES DO

The Court's statement of principles is as follows:

> "As an independent judiciary, the Provincial Court of British Columbia is committed above all to upholding the Rule of Law and the Constitution of Canada. We aspire to be fair, impartial, compassionate and patient in a knowledgeable and consistent application of the law to all persons, with due regard to each person's circumstances. We strive in serving the communities of BC to provide reasonable and equal access to justice for all persons through traditional and innovative processes which, to the extent permitted by law and our resources, are practical, speedy, inexpensive and simple".

More details of what Provincial Court judges do and how the Court functions, can be found in the Court's Annual Reports which are published on line at http://www.provincialcourt.bc.ca.

a. Jurisdiction

The Provincial Court is one of two trial courts in the province; the other is the Supreme Court of British Columbia.

The Provincial Court's caseload primarily consists of the subject areas of criminal, youth, child protection, family, civil, traffic and bylaws. Appeals from the Provincial Court go to the Supreme Court of British Columbia or the British Columbia Court of Appeal.

Provincial Court judges are bound by (they must follow) the decisions of the Supreme Court of Canada, the British Columbia Court of Appeal and the British Columbia Supreme Court. Decisions of higher courts elsewhere in Canada are considered persuasive but not binding.

Understanding the hierarchy of courts, and the appeal process, is important for reporters and the public. So, for example, if a party is unhappy with the result of a trial or sentencing, the remedy is to appeal the decision. If the public is unhappy with a criminal decision, then they must look to the Crown Counsel to decide whether there is any basis in law, or in the facts of the case, to commend an appeal. The judge who dealt with the matter is not permitted to discuss the matter on the radio or on television because he or she is expected to have fully explained the decision in the oral or written reasons. The appeal court will decide whether the judge made an error. They will make their decision based upon the evidence and the law; they will not be swayed by comments from the first judge or the public or the media as to whether they think the decision is right or wrong. The appeal process is one of the major components of judicial accountability.

The Provincial Court has jurisdiction in laws enacted by both our federal parliament and by our provincial legislature. Federal statutes include the *Criminal Code*, *Youth Criminal Justice Act*, *Controlled Drugs and Substances Act*, *Firearms Act*, *Income Tax Act*, *Fisheries Act,* and the *Contraventions Act*. Provincial statutes include the *Adult Guardianship Act*, *Child, Family and Community Service Act*, *Commercial Transport Act*, *Court Order Enforcement Act*, *Environmental Management Act, Family Law Act*, *Family Maintenance Enforcement Act*, *Health Act*, *Liquor Control and Licensing Act*, *Community Charter and Local Government Act* (Bylaw Offences), *Inter-jurisdictional Support Orders Act*, *Mental Health Act*, *Motor Vehicle Act*, *Offence Act*, *Passenger Transportation Act, Small Claims Act*, *Waste Management Act*, *Wildlife Act*, *Workers Compensation Act* and the *Youth Justice Act*.

The Provincial Court's jurisdiction extends to all criminal offences except a few in which the Supreme Court has exclusive jurisdiction, as set out in section 469 of the *Criminal Code* (such as murder, treason, piracy, alarming Her Majesty). For many more serious offences (indictable offences) an accused person may choose whether to be tried by a Supreme Court Judge with or without a jury, or by a Provincial Court Judge. If an accused elects to be tried in the Supreme Court, either the Crown or the defence may request a preliminary inquiry (also called a preliminary hearing) in Provincial Court.

The Criminal Code now requires that a preliminary inquiry be focused to assist the parties to identify issues and necessary witnesses in order to avoid wasting court time. At the conclusion of a preliminary hearing a Provincial Court Judge does not decide on guilt, but only on whether there is sufficient evidence to commit the accused to stand trial in the Supreme Court. The test is whether a reasonable jury, properly instructed on the law, could find the accused guilty on the evidence presented in the preliminary inquiry. Often the parties consent to committal but a preliminary hearing is requested because the defence wishes to explore some of the evidence or the Crown wishes to get some evidence on record before trial.

In family matters, the Provincial Court has jurisdiction in child protection cases (where a social worker has removed a child from its parents' care because of concerns about neglect or abuse), guardianship and parenting arrangements when parents have separated, child and spousal support, and protection orders. However, because of the way in which the 1867 British North America Act divided powers between the federal and provincial governments, only the federally appointed Supreme Court of B.C can deal with divorce, adoption and the division of family assets.

The Provincial Court's civil jurisdiction covers cases with a monetary limit of $25,000 which may increase to $50,000 in the future. In both family and civil matters judges not only hear trials in which they decide the issues between the parties but conduct settlement conferences in which they meet with the parties and any lawyers involved to discuss settling the issues by consent.

Provincial ticket offences, primarily traffic, are heard by Judicial Justices who also hear bail and search warrant applications from around the province by fax or telephone through the Justice Centre in Burnaby. Judicial Justices may also conduct payment hearings under the *Small Claims Act* and *Regulations* and trials of municipal bylaw

offences. Although Judicial Justices are now required to have practiced law for at least five years, the *Provincial Court Act* does not permit them to deal with applications under the *Canadian Charter of Rights and Freedoms* or offences that may result in imprisonment.

b. Caseloads

During fiscal year 2012/13, the Provincial Court received 143,403 new cases and subsequent applications to be heard by judges, as well as 88,887 new traffic and bylaw cases to be heard by Judicial Justices except in remote locations and when a *Charter* remedy or imprisonment is sought.

Over 95% of all criminal cases in British Columbia are dealt with through the Provincial Court (in 2012/13 there were some 81,326 new adult criminal cases in the Provincial Court in comparison with 1,564 in B.C. Supreme Court in 2012).

The number of youth criminal cases has declined since the *Youth Criminal Justice Act* was introduced in 2003 and it continues to drop (5,192 in 2012-2013 compared to 8,604 in 2008/09), due to the emphasis on alternate measures which keeps youth out of the courts because they are dealt with through diversion or extrajudicial measures through the police.

The Provincial Court shares jurisdiction with the Supreme Court for child protection and family matters related to guardianship, parenting responsibilities, parenting time or contact, and child and spousal maintenance, and had 10,161 new child protection and family cases in 2012/13, a decline from previous years.

In 2012/13, the Court received 14,981 new civil cases.

In 2004-2005 the Court established the following standards for court performance throughout the province: in 90% of cases the trial of a half day adult criminal matter should commence within 6 months, a 2 day adult criminal trial within 8 months, youth matters within 4 months, civil settlement conferences within 2 months and civil trials within 4 months following the settlement conference, child protection hearings within 3 months and family hearings within 4 months. On average, time to trial in all divisions has continued to decrease since early 2011.

However, most of the Court's performance targets are not being met on a provincial basis. In 2012/13, the adult criminal matter targets were met, however, not so for civil and family matters (for example, the average wait time for a half-day family matter is 7 months instead of 6 months and for a civil 2-day matter it is 11 months instead of the targeted 8 months).

Case backlogs are monitored and addressed as resources permit. For example, for 2013/14 a joint effort by the provincial Ministry of Justice and the Office of the Chief

Judge dedicated 170 days of judicial resources to reduce backlogs in child protection and criminal matters in selected court locations. Regular updates on backlogs can be viewed at http://www.provincialcourt.bc.ca/news-reports/court-reports.

Restructuring in 2013 divided the province into five regions, streamlining administration by reducing the number of judges with administrative responsibilities. The Fraser, Interior, Northern, Vancouver Island, and Vancouver Regions are overseen by Regional Administrative judges who meet regularly with the Chief Judge and the Associate Chief Judges to discuss the administration of the court. Judges are assigned to a region and may sit (work in a court) in any courthouse in the region. Judicial Case Managers working with the Regional Administrative Judge set a rota (work schedule) for the judges over a period of time. Judges go where the rota requires them to be and have relatively little control over where they will preside or over what matters.

Judges in some districts are expected to travel extensively. As examples, some judges travel regularly between Campbell River, Courtenay, Gold River, Nanaimo, Port Alberni, Port Hardy, Tahsis, Tofino, and Ucluelet; others to Burns Lake, Dease Lake, Houston, Kitimat, Masset, New Aiyansh, New Hazelton, Prince Rupert, Queen Charlotte City, Smithers, Stewart and Terrace; still others sit in Alexis Creek, Anaheim Lake, Chetwynd, Dawson Creek, Fort Nelson, Fort St James, Fort St John, Fraser Lake, Hudson's Hope, Kwadacha, Mackenzie, McBride, 100 Mile House, Prince George, Quesnel, Tsay Keh Dene, Tumbler Ridge, Valemount, Vanderhoof, and Williams Lake. Judges who travel, are not paid overtime and receive a daily meal allowance and travel expense in accordance with the provincial allowance. In many instances, judges must travel on evenings or weekends, or on their judgment days, which are non-sitting days set aside each month for office work such as legal research and writing reserved judgments.

Provincial Court judges are required - through a resolution of the independent statutory body which has oversight of judicial conduct and education, the "Judicial Council" - to attend five compulsory education days per year. Twice each year the court holds educational conferences (typically, one in Vancouver and the other in another location within the province). Judges can choose to be relieved from sitting duties to attend an additional five days each year of individually-selected education leave for which they have access to a modest allowance.

Judges are expected to keep abreast of all changes in the law, including recent case law which binds them, statutes or other legislation. Judges do not have research staff and have to do their own research, usually by computer. During spring and fall law school terms they may have access to some research assistance by judicial interns, UBC law students spending a term with the Court. Many judges participate in on-line education courses through the National Judicial Institute on their own time. Some Provincial Court Judges have access to a judicial assistant (secretary) but many do not and have to do their own typing and clerical work. Where judicial assistants are available, their time will, commonly, be shared among seven or more judges.

Most judges also devote their time to public outreach activities ranging from education oriented presentations to participating in community projects such as a food bank. Many

judges also serve on committees for the Court and with judicial and other justice-related associations.

For further information on the Court's activities see the Court's Annual Reports at http://www.provincialcourt.bc.ca/news-reports/court-reports. The annual reports are posted as they come out and are readily available to the public.

3. THE RULE OF LAW AND SEPARATION OF POWERS

a. Rule of Law

A vitally important principle which is often not fully understood is that Canada is governed by the Rule of Law which, according to the Anglo-American interpretation, involves separation of powers of state, legal certainty, the principle of legitimate expectation and equality of all before the law.

Aristotle first came up with the concept when he distinguished the rule of men from the rule of law which he considered to be a pure and external authority.

Thomas Aquinas described a valid law as one that is in keeping with Reason, is established by a proper authority (such as a democratically elected government), is intended to achieve public good, and is properly communicated to all citizens.

Samuel Rutherford was the first to introduce theoretical foundations to the principle of the Rule of Law in *Lex Rex* (1644) which was followed up by Montesquieu in *The Spirit of the Laws* (1748). In the Commonwealth, the best known exposition of the principle of the Rule of Law was set out by Albert Venn Dicey in his *Law of the Constitution* (10th ed., 1959) p 187 et seq. when he said that there are three main pillars which hold up the Rule of Law: (1) the absolute supremacy of the regular law and not arbitrary governance; (2) equality before the law and equal subjection of all citizens to the ordinary law administered by ordinary courts; (3) the law of the constitution is the result of the rights of citizens as defined and enforced by the courts (*Halsbury's Laws of England,* Vol.: Constitutional Law and Human Rights, paragraph 6, footnote 1).

An important thread running through the principle of the Rule of Law is that in order for the principle to be upheld, the judiciary has to be independent as it protects the citizenry from arbitrary rule by government. An example of arbitrary government is the Night and the Fog decrees in Nazi Germany in which the government acted on its own volition and was not subject to any checks and balances in its pursuit of Jews. Dictatorships sometimes have secret police who are not accountable according to established laws because they purport to be ensuring the safety of the state in their actions. South Africa was run by a small minority white government in the apartheid era from 1948 until 1994 when the ANC came into power. The black majority could not vote so the government was elected by approximately 3% of the total population and it passed the laws

governing all the citizenry, including having capital punishment for offences such as rape (as it was then called), murder and treason.

To achieve judicial independence, Provincial Court Judges in British Columbia are appointed with no political affiliation. The process of applying and being vetted is comprehensive and thorough. Information on appointments and discipline of judges can be found at http://www.provincialcourt.bc.ca/.

Judges are held accountable in various ways:

a) through the open courts principle – everything that occurs in courts is open to the public and subject to public scrutiny and public criticism; given that relatively few citizens attend the courts personally, the public policy objective of the open courts principle is largely achieved through media reporting (which is one of the reasons why it is so important that media reporting of courts be informed and accurate);
b) appeals to a higher court if the decision is deemed to be incorrect ensure that every judge conforms to the law;
c) the Chief Judge and the Judicial Council have the authority under statute to examine and investigate public complaints against judges; if it is determined that a judge has engaged in misconduct, or for other reasons that her or his fitness for office is called into question, this process can lead to "corrective action" being taken against the judge or, in an extreme case, could result in the judge being removed from office.

In Canada, laws are made by democratically elected members of the legislature – federally by the Parliament of Canada, and provincially by the members of the Legislature. Courts interpret and apply the laws. If a Court concludes that a law is unconstitutional (typically, that the law is contrary to the *Charter of Rights* in a way that cannot be justified), then the Court has the power to strike down the law. In that event, the Parliament or the Legislature can choose to enact new legislation to accomplish whatever may have been the purpose of the unconstitutional legislation, but will do so in a manner which takes into account the reasoning of the Court, and attempts to avoid whatever was the constitutional shortcoming in the earlier version of the statute. Section 33 of the *Constitution Act, 1982* gives legislatures the power to pass laws "notwithstanding" the *Charter* but this has rarely been done.

The Rule of Law is associated with other concepts such as:

- *Nullum crimen*, *nulla poena sine praevia lege poenali* – no laws can be made after the fact
- Presumption of innocence – all accused are presumed innocent until proven guilty beyond a reasonable doubt
- Double jeopardy – individuals may only be punished once for every crime committed and retrials are not permitted on the basis of new evidence (*res judicata*)
- Legal equality – all individuals are equal before the law without distinction based on social stature, religion, political views, gender etc.

- *Habeas corpus* – to have the body to be subjected to examination – a person who has been arrested is entitled to know what crimes he or she is accused of and to have his or her custodial status reviewed by a judicial authority and those who are unlawfully imprisoned must be freed.

QUESTIONS

1. In September, 2010, BC introduced new impaired driving laws that give the police the power to issue fines, suspend licences, and impound vehicles. In what ways might this be in conflict with the Rule of Law?

2. The 2011 Stanley Cup riot in Vancouver was covered extensively through social media. What impact does this have on the presumption of innocence? On the Rule of Law?

b. Separation of Powers

Flowing from the principle of the Rule of Law is that the arms of state, namely the executive, the legislative, and the judiciary must be kept separate and apart in order to function fully.

The most famous exposition of this idea was stated by John Adams in the Constitution of the Commonwealth of Massachusetts in 1780 as follows:

> In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of laws and not of men (*Massachusetts Constitution,* Part The First, art. XXX (1780)).

4. CRIMINAL LAW OVERVIEW

a. The Process

The police will investigate an alleged offence and send a report to Crown Counsel. An accused is charged by the Crown in a document called the information which may allege one or more offences which are called counts. Once an information is sworn, usually by the police liaison officer, if the accused is not in custody, a Court Services justice of the peace holds a private hearing to decide whether to issue a summons or warrant to bring the accused to court. In order to bring an accused person before the Court, the police may have released an accused on a promise to appear on a certain

date (with certain conditions), or the justice may issue a summons which has to be personally served on the accused, or the accused may be arrested pursuant to a warrant.
Anyone, however, who has reasonable grounds to believe that a person has committed an offence can lay an information before a justice of the peace. There will then be a private hearing in which the justice of the peace or a judge may hear witnesses and if satisfied that there is some admissible evidence of every essential element of the charge, may issue a summons or, in exceptional circumstances, issue a warrant for the arrest of the accused. This is called a private prosecution.

b. Bail Hearings

If an accused is arrested, he or she is entitled to a judicial interim release hearing which is commonly called a bail hearing. Section 11 of the *Charter* provides that the accused has the right not to be denied reasonable bail without just cause.

There are two criteria in section 11 namely: “reasonable bail” which governs the type and condition of bail; and “just cause” which governs the reasons for denying bail. Bail must be granted unless the prosecutor shows that pre-trial detention is justified (*R.* v. *Morales*, [1992] S.C.J. 98).

Section 515(1) of the *Criminal Code* sets out three grounds for denying bail which the Crown may rely upon in seeking the detention of the accused.

The primary ground is to ensure the attendance of the accused at court. Typically the Crown will refer to a record of previous convictions for failing to attend at court in support of the submission that the accused has shown a past predilection for not attending when required, or a previous breach of an order of release such as an undertaking or recognizance.

The secondary ground is where the Crown shows there is a “substantial likelihood” that the accused will commit further offences if released or interfere with the administration of justice (such as witness tampering). It is only if the “substantial likelihood” endangers the protection or safety of the public and is necessary for public safety, that detention is justified (*R*. v. *Morales* (above)).

The tertiary ground is where detention is necessary to maintain confidence in the administration of justice, having regard to all the circumstances, including the apparent strength of the prosecution’s case, the gravity of the nature of the offence, the circumstances surrounding its commission, and the potential for a lengthy period of imprisonment. Bail is available for even serious crimes such as murder (*R.* v. *Nguyen*, [1997] B.C.J. 2121), where Chief Justice McEachern stated: “An important consideration is whether the violence occurred in circumstances of malevolent rather than foolish or spontaneous intent”.

The *Criminal Code* requires that an accused be released without conditions unless the Crown shows cause for release on conditions or detention, except in specific circumstances. Some bail provisions place the burden on the accused (the reverse onus situation) so an accused must show why they should not be kept in custody, typically where an accused has been released and committed a further serious offence, or for drug trafficking.

If an accused is released, they are placed on an undertaking with or without conditions such as reporting to a bail supervisor, residing at a specified address, and having no contact with the complainant or on a recognizance, with cash bail or a surety and conditions. If an accused requests a publication ban under section 517 of the *Code* the judge or judicial justice must make an order prohibiting publication of the evidence taken, the information given or the representations made at the bail hearing and the reasons for decision given by the judicial officer. The purpose of this ban is to prevent potential jurors from hearing allegations that may not be admitted or proven at the trial.

c. The Preliminary Inquiry

For many serious offences (indictable offences) an accused has the right to elect (choose) to be tried in the Supreme Court either with or without a jury. In that case the Crown or accused may request a preliminary inquiry (also known as preliminary hearing) to be held in Provincial Court.

At the inquiry the Crown calls witnesses and the accused seldom gives or calls evidence. The test is not guilt or innocence, but whether there is sufficient evidence upon which a reasonable jury properly instructed could return a verdict of guilty. If the standard is met, the accused is committed to stand trial in Supreme Court. If not, the accused is discharged. The scope of the inquiry may be limited to specific issues. There may be a ban on publication of the evidence at the inquiry, pursuant to section 539, if the Crown requests it, and the judge must order a ban if the accused does so. This ban remains in place until the accused is discharged or the trial is ended. The purpose of the ban is to prevent potential jurors from hearing evidence which may not be admitted at trial.

The judge at a preliminary inquiry does not weigh the evidence and cannot make *Charter* decisions.

d. The Trial and Presumption of Innocence

At trial the burden of proof faced by the Crown is “beyond a reasonable doubt”. Before the state is entitled to a conviction, before the citizen can be subjected to the stigma and penalties of a criminal conviction, the prosecutor is required to prove through admissible evidence each and every “element” or component of the offence with which the accused is charged in the Information. It is essential to recognize that there can be a significant difference between suspecting or even believing that someone has committed a crime,

and “proving” the crime the way one might in a conversation over coffee, and being able to produce an adequate body of admissible evidence in a courtroom to discharge the Crown’s burden of proof.

Our Canadian Constitution requires that Courts presume the accused to be innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal as set out in section 11(d) of the *Charter*.

The accused does not have to prove anything. If the accused testifies as to his innocence and is believed, there must be an acquittal. If the accused is not believed, but there is reasonable doubt introduced by the defence evidence, there must be an acquittal. If there is no doubt raised by the defence evidence but on the evidence which is accepted there remains a doubt, there must be an acquittal (*R*. v. *W.(D.)*, [1991] 1 S.C.R. 742) or if the judge is left with doubt about who to believe, the judge must acquit.

The judge has the difficult task of analyzing the evidence. There is a requirement to be independent and impartial. The evidence is sometimes direct and often circumstantial. The judge assesses each witness on the basis of credibility and the extent to which the evidence is reliable and probative and makes findings of fact on the basis of the evidence which is accepted.

e. Sentencing

Sentencing is said to be one of the most difficult tasks that a judge faces. The *Criminal Code* sets out many factors a judge must consider in sentencing. It establishes that the fundamental purpose of sentencing is to contribute to a just, peaceful and safe society by imposing just sanctions with the objectives of denunciation, deterrence, rehabilitation and reparation, amongst others, as set out in section 718 of the *Code*.

The sentencing judge must take into account the sentencing principles set out in section 718.2 and increase or reduce the sentence by taking into account any mitigating or aggravating circumstances. Examples of mitigating factors are an early guilty plea, remorse, low risk to re-offend, no criminal record etc. Examples of aggravating circumstances are extensive criminal record, lack of remorse, and violence or threats. The *Code* provides that the aggravating circumstances include the following: breach of trust where the offender is in a position of authority or trust, extensive criminal record, and evidence that the offence was motivated by bias, prejudice or hate based on race, nationality, language, colour, religion, sex, age, mental or physical disability or sexual orientation.

Sentences must be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. The cumulative effect of consecutive sentences must not be unduly harsh or long. If less restrictive sanctions are appropriate (such as the contentious conditional sentence order), they must be considered and imposed where appropriate, and the remedial provision of section 718.2(e) should be given force and effect particularly when dealing with aboriginal offenders (*R*. v. *Gladue*, [1991] 1 S.C.R. 688; *R. v. Ipeelee* 2012 SCC 13, [2012] 1 S.C.R. 433).

The sentencing judge may consider written victim impact statements prepared according to section 722 and the victim may read the statement to the court.

A judge cannot impose any sentence they wish. The *Criminal Code* provides a maximum sentence for each offence, and a minimum sentence for some offences. Provincial Court Judges must also follow decisions of the B.C. Court of Appeal about sentences that are appropriate in specific circumstances. Thus, a judge may be criticized for imposing a too-lenient sentence when they have imposed the maximum permitted by the *Code* or followed the law established by the Court of Appeal.

f. Charter of Rights

In 1982, the *Canadian Charter of Rights and Freedoms* was enacted and proclaimed in force. The preamble is as follows:

> **Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law.**

Section 1 guarantees freedoms and rights as set out in the *Charter* subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

The preamble and section 1 set the stage for the interpretation of the *Charter* and tie in with the rule of law, upholding the rights of the individual to be free from arbitrary rule, and to equality before the law.

In order to protect the rights of individuals from arbitrary actions of agents of the state, such as the police, there must be safeguards around the granting of search warrants for example, or the protection of certain records. Access to judicial proceedings is an integral part of openness of the courts (subject to section 486 of the *Code*) and section 2(b) of the *Charter* provides for freedom of the press subject to the limitations of section 1. There is to be a balance of the right of the accused to a fair trial and the right of the public to know through the media (*Attorney General for Manitoba* v. *Groupe Quebecor Inc*. (1987), 37 C.C.C. (3d) 421, 59 C.R.(3d) 1, 45 D.L.R.(4th) 80 (Man. C.A.).

g. *Y.C.J.A.*

In 2003 the *Youth Criminal Justice Act* (*Y.C.J.A.*) replaced the *Young Offenders Act*. The *Y.C.J.A* makes it clear that Parliament intended that youth are to be treated differently from adults and their identity cannot be published in most cases. Records and documents relating to young offenders are generally not released to the media or the public without court order, or not at all in some cases. There are some instances where the ban on publication may not apply. Part 6 of the *Y.C.J.A* (sections 110 to 129) set out in detail how publication, records and information are dealt with in relation to young persons.

h. Search Warrants

Included in the *Criminal Code* is provision for law enforcement to obtain search warrants. Sections 487 to 487.053 of the *Code* set out the procedure and powers relating to search warrants. Section 487 provides for the search of a building, receptacle or place and sets out the procedure that must be followed to obtain a search warrant. Section 487.01 deals with search and seizure and allows for obtaining a warrant in circumstances where a warrantless search or seizure would violate section 8 of the *Charter*. Sections 487.013 to 487.017 provide for production orders against a financial institution or for commercial information.

Sections 487.04 to 487.092 provide, amongst other things, for forensic DNA analysis and the procedure to obtain a warrant for bodily substances for DNA analysis, as well as exceptions, collection procedure, reports, investigative procedures, transmission of results, destruction and the like.

Sections 487.1 to 490 contain other provisions respecting search warrants. Of particular interest to journalists is the restriction on publication set out in section 487.2.

5. PROBLEM-SOLVING COURTS

The particular needs of First Nations communities and mentally disordered and substance addicted offenders have led to several innovative responses in the form of problem-solving courts. Through consultation and collaboration with social and health service agencies, the Provincial Court has attempted to focus its resources in more effective ways in various communities around the province.

Drug Treatment Court of Vancouver (DTCV)

Created in 2001, the DTCV offers an alternative to the regular criminal court process for individuals whose commission of drug or minor *Criminal Code* offences is related to drug addiction. The program aims to help offenders abstain from drugs; avoid reoffending; and improve well-being including housing, pro-social activities, employment and education.

DTCV participants undergo treatment in a staged program supervised by a judge for a minimum of 14 months, receiving services from an addiction counsellor, case manager, psychologist, addiction specialist physician, nurse and financial assistance worker. Drug use is monitored through random urine screening. In order to “graduate” and either receive a non-custodial sentence or have their charge stayed by the Crown participants must have done the following:

- abstained from all intoxicants for the preceding three-months;

- secured stable housing, approved by the DTCV judge;
- not been charged with a new criminal offence in the preceding six months; and
- engaged in secure employment, training or volunteering for the preceding three months.

A study by the Faculty of Health Sciences at Simon Fraser University concluded that DTCV participants exhibited significantly greater reductions in offending than others.

First Nations Court

First Nations Court sits in several communities, including New Westminster (since November 2006); North Vancouver (since February 2012, includes offences occurring in Whistler, Squamish and the North Shore); and Kamloops (March 2013). The Court has developed in consultation with local First Nations, the community at large, police, Community Corrections, Crown counsel, defense lawyers, and other support service groups like the Native Courtworker and Counselling Association. Its focus is holistic, recognizing the unique circumstances of First Nations offenders within the framework of existing laws. Local First Nations communities are encouraged to contribute to the proceedings. The Court provides support and healing to assist in rehabilitation and reduce recidivism. It also seeks to acknowledge and repair the harm done to victims and the community. Several Canadian justice system professionals and academics have shown interest in using B.C.'s First Nations Court as a model for courts in their own communities.

Vancouver's Downtown Community Court (DCC)

Many offenders in downtown Vancouver have health and social issues, including alcoholism, drug addiction, mental illness, homelessness and poverty. The DCC, opened in 2008, is a partnership between the Court, the Ministry of Justice, and social and health service agencies. Its goal is to reduce crime, improve public safety, and provide integrated justice, health and social services to offenders in a timely way, while holding them accountable for their actions. This Court includes a co-coordinator, Crown counsel, defence lawyers, Vancouver police officers, sheriffs, court clerks, probation officers, native court workers, and other health and social service agencies located in or near the Court.

Cowichan Valley Domestic Violence Court

The Cowichan Valley Domestic Violence Court project, begun in 2009, is a blend of an "expedited case management" process and a "treatment or problem-solving" court. The goal is to deal with family violence cases as soon as possible in order to reduce victim recantation or other witness-related problems, to offer a less punitive approach for those willing to accept responsibility and seek treatment, and to ensure the safety of victims and the public. Partners in this project include specially trained and dedicated Crown counsel, RCMP, probation officers, community-based victim services, a native court worker, and a child protection social worker.

Victoria Integrated Court (VIC)

The VIC is a community-led initiative arising from Victoria's Street Crime Working Group and Mayor's Taskforce on Homelessness. Community Outreach and Treatment Teams were created to address the demands placed on emergency and health service providers by people who are homeless and substance addicted and/or mentally disordered. Virtually all the individuals serviced by these teams are chronic offenders who place high demands on the criminal justice system. The Court initiated a discussion that led to the creation of the VIC in 2010.

The VIC's integrated approach strives to improve access to health, social and economic services for offenders, to improve public safety, and to hold offenders accountable for their actions in a timely manner. Community service is frequently ordered as part of a VIC sentence. Participants have helped create a mural and a community garden where they learn gardening skills, grow their own produce, and earn a share in any profits from produce sold.

Nanaimo Domestic Violence Court

Begun more recently, this court sits every two weeks. It has a dedicated Crown Counsel and professional support available for both offenders and victims. Its goals are to assist families to address violence and support their plans whether they desire reintegration or separation. Other Provincial Courts around the province have developed similar initiatives.

6. PUBLICATION BANS

Every journalist working within the court system must constantly be vigilant regarding the possibility that there is some form of publication ban in effect for the proceeding which is being covered in court. This is particularly important when a journalist is transmitting information electronically from a courtroom without much opportunity for review or editing before publication. A breach of a publication ban may in some instances be an offence under legislation; other breaches can constitute a contempt of court, punishable by the court.

The following list of bans is not intended to be exhaustive. A list is also available in the "Policies Regarding Public and Media Access in the Provincial Court of British Columbia" at http://www.provincialcourt.bc.ca/news-reports/media-access-policy. The online version and one found on the website of the Supreme Court of B.C. should be consulted regularly because statutes are amended from time to time. Moreover, since this list is only a brief summary of some of the relevant provisions, journalists should reference the specific statutory provisions for their exact wording. Furthermore, journalists are strongly recommended to seek legal advice if there is any doubt as to whether publication is permitted.

There are essentially three types of publication bans. First, there are automatic bans which are in effect by operation of statute and do not require any court order or application by a party to the case in order to be effective. Second, there are bans that statutes require a judicial officer to order if requested by a party (i.e. *Criminal Code* s. 517 when a publication ban is sought by the accused). Third, there are discretionary bans which must be specifically sought and may be ordered by the Court.

Journalists may subscribe to be notified of discretionary bans imposed in the Supreme Court of B.C. at http://www.courts.gov.bc.ca/supreme_court/publication_bans/notification.aspx.

a. Automatic Bans:

Criminal Code of Canada

- **Section 276.3(1)** – makes it a criminal offence to publish information from a hearing under s.276.1. A hearing under s.276.1 may be held in cases involving sexual offences to determine whether evidence regarding the prior sexual conduct of a complainant can be admitted during the trial. The ban also applies to the decision of the judge on the application unless the judge determines the decision can be published.

- **Section 278.9(1)** – makes it a criminal offence to publish information from a hearing held under s.278.3 to obtain records pertaining to a complainant or a witness. A hearing under s.278.3 may be held in cases involving sexual offences. The ban also applies to the decision of the judge on the application unless the judge determines the decision can be published.

- **Section 487.2** – makes it a criminal offence to publish in any document, or broadcast or transmit in any way, information about a search warrant issued under section 487 or 487.1. NOTE: This section has been held to be of no force and effect as it unreasonably restricts the freedom of expression provided under s. 2(b) of the *Charter.* (*Girard c. Demers*, 2001 CanLII 9809 (QCA) *leave to appeal to the Supreme Court of Canada refused*)

- **Section 542 (2)** – makes it a criminal offence to publish an admission or confession that was given in evidence at a preliminary inquiry unless the accused has been discharged or, if the accused is ordered to stand trial, the trial has ended.

- **Section 648 (1)** – makes it a criminal offence to publish information about any portion of a jury trial which takes place in the absence of the jury before the jury begins deliberations on its verdict.

- **Section 672.501(1) –** provides that a Review Board dealing with a person who has been declared unfit to stand trial or Not Criminally Responsible on account of Mental Disorder shall make an order directing that any information that could identify a victim, or a witness who is under the age of eighteen years, shall not be published in any document or broadcast or transmitted in any way when the Review Board holds a hearing referred to in section 672.5 for an offence referred to in subsection 486.4(1).

- **Section 672.501(2) -** provides that a Review Board shall make an order directing that any information that could identify a witness who is under the age of eighteen years or any person who is the subject of a representation, written material or a recording that constitutes child pornography shall not be published in any document or broadcast or transmitted in any way when the Review Board holds a hearing referred to in section 672.5 for an offence referred to in subsection 163.1.

- **Section 672.51(11)** – bans the publication of any assessment report provided to the court during the disposition hearing held after a verdict of not criminally responsible on account of mental disorder or unfit to stand trial is given in respect of an accused.

Youth Criminal Justice Act

- **Section 110** – provides that no one shall publish the name of, or information related to, a person if it would identify the person as being dealt with under the *YCJA*. However, publication is permitted when a young person has received an adult sentence. In some cases, publication may also be permitted where a youth has received a youth sentence for a violent offence and the judge has lifted the ban under s. 75(2) or where publication is made in the course of the administration of justice rather than to make the information known in the community.

- **Section 111(1)** – provides that no person shall publish the name of someone under the age of 18 who has been a witness or victim in connection with an offence committed or alleged to have been committed by a young person.

Sex Offender Information and Registration Act

- **Section 16(4)** – provides that no person shall disclose any information that is collected pursuant to an order under *S.O.I.R.A.* or the fact that information relating to a person is collected under *S.O.I.R.A.*

Provincial Court Act

- **Section 3(6) and 3(7)** – Subsection 3(6) prohibits publication in relation to a family or children's matter before the Provincial Court of anything that would reasonably be likely to identify the child or a party. Subsection 3(7) indicates that, despite subsection 3(6), a report, comment or analysis concerning a proceeding may be published in a document designed primarily to assist those engaged in the practice of law or in legal or social research.

b. "Discretionary" Publication Bans

The following is a listing of publication bans that can be considered discretionary in the sense that an order of the court is required before such a ban is in place (although in some instances ban orders are mandatory once the application for it has been made):

- **Common law authority of a court** - the court has common law authority to govern its own processes, which permits it to ban publication of all or part of a proceeding or to exclude the public from the courtroom.

Criminal Code

- **Section 486(1)** – An order may be made to exclude the public from the courtroom for all or part of the proceeding.

- **Section 486.4(1) -** An order may be made in cases involving sexual offences to ban publication, broadcast or transmission of any information that could identify a complainant or witness.

- **Section 486.4(2) -** An order may be made in cases involving sexual offences to ban publication, broadcast or transmission of any information that could identify a complainant or witness under the age of 18.

- **Section 486.4(3) -** An order may be made in cases involving child pornography to ban publication, broadcast or transmission of any information that could identify a witness who was under 18 years of age or, any person who is the subject of a representation, written material, or a recording that constitutes child pornography.

- **Section 486.5(1) -** Unless an order has been made under s.486.4, an order made under this section bans publication, broadcast or transmission of any information that could identify a victim or a witness. Pursuant to s. 486.5(6), an order can be made to direct that the application for a ban under s.486.5 be heard in private.

- **Section 486.5(2) -** An order bans publication, broadcast or transmission of any information that could identify a justice system participant who is involved in proceedings in respect of an offence referred to in s.486.2(5).

- **Section 486(3) -** of the *Criminal Code* has been replaced. However, bans ordered pursuant to it may still be in place. An order made under the former s.486(3) bans publication of the identity of a complainant or a witness and any information that could disclose the identity of the complainant or witness.

- **Section 486(4.1) -** has been replaced. However, bans ordered pursuant to it may still be in place. An order made under the former s.486.4(1) bans publication of any information that could disclose the identity of a victim, witness, or justice system participant.

- **Section 517 -** An order bans publication of the evidence and information given to the court during a bail hearing as well as the reasons given by the judge until the accused is discharged or, if ordered to stand trial, the trial has ended. (When the application is made by the accused the order must be granted by the court but the order is discretionary when sought by the Crown).

- **Section 539 -** provides that evidence given at a preliminary inquiry may not be published until the accused has been discharged or, if ordered to stand trial, the trial has ended.

- **Section 631(6) -** An order may be made to ban the publication, broadcast or transmission of any information that could disclose the identity of a juror.

- **Section 672.501(3) -** provides that a Review Board may make an order directing that any information that could identify a victim or witness shall not be published in any document or broadcast or transmitted in any way when the Review Board holds a hearing referred to in section 672.5.

- **Section 672.51(11) -** deals with disposition hearings under part XX.I (mental disorder) of the *Criminal Code* and prohibits the publication of any disposition information (as defined in s. 672.51) that is withheld or any parts of the proceeding from which the accused was excluded.

Youth Criminal Justice Act

- **Section 65 –** was repealed in 2012 but bans imposed may still be in place. Section 65 provided that where the Crown did not seek an adult sentence for a presumptive offence, a publication ban on disclosing the identity or any information that would disclose the identity of the young person was mandatory.

- **Section 75 –** With certain exceptions s. 110 bans publication of the identity or of any information that could disclose the identity of a young person dealt with under the *Y.C.J.A.* However, when a judge imposes a youth sentence on a young person convicted of a violent offence, the ban on publication may be lifted if the Crown satisfies the judge that this is necessary to protect the public from the risk of the young person committing another violent offence.

- If an adult sentence is imposed for a violent offence, the publication ban no longer applies (see s.110(2)(a)).

- **Section 132** – permits an order to exclude the public from the courtroom for all or part of the proceeding.

Extradition Act

- **Section 26** – An order may be made to ban publication of the evidence of an extradition proceeding.

- **Section 27** – An order may be made to exclude the public from the courtroom for all or part of an extradition proceeding.

7. ACCESS TO COURT RECORDS

a. Access to Court Records at Court Registries for Adult Criminal Proceedings in Provincial Court

For guidance as to what criminal court records may be accessed by attending at a court registry, either by viewing the material or being provided a copy, depending on the nature of the document, see "Access to Court Records" in "Policies Regarding Public and Media Access in The Provincial Court of British Columbia", a document available at http://www.provincialcourt.bc.ca/downloads/pdf/Media%20Policy%20Regarding%20Public%20and%20Media%20Access.pdf and last revised by the Office of the Chief Judge of the Provincial Court of BC in November 2012.

The policy is premised on the general rule in Canada that Court proceedings are open to the public, including the media, and may be reported in full. Since the average person learns about the legal system mainly through the images, audio and print resources that the media use to convey reports about court proceedings, both the justice system and the public are best served when media coverage is accurate and complete. At the same time, the presiding judge has the ability to control Court proceedings to ensure a fair trial and to protect the integrity of the process. As well,

every Court has a supervisory and protecting power over its own records and access can be denied when the ends of justice would be subverted by disclosure or the judicial documents might be used for an improper purpose.

The policy indicates that timeliness is essential to ensure access to court files and documents. The manager or court administrator shall respond to a request for access to court records as quickly as reasonable possible. Unless otherwise specified, persons having access to a document may also have a photocopy of that document after payment of the prescribed fee.

Persons wishing to review a decision of the manager or administrator denying access to documentation may do so by application to the court.

Members of the public may have access to case information through Court Services Online at https://eservice.ag.gov.bc.ca/cso/index.do or at a public enquiry terminal at the court registry where the case is being heard.

Subject to exceptions outlined in "Access to Court Records" on the Court's website, the public, which of course includes the media, should be given access to the following information in criminal matters in Provincial Court:

a.) Name of accused (unless prohibited by court order);
b.) Specific charges or proceedings contained in the information;
c.) Notice of Appeal;
d.) Information concerning adjournment dates;
e.) The final disposition;
f.) Reasons for Judgment, if on file, and not restricted by court order or otherwise.

The public, including the media, are also to be given access to:

a.) Record of Proceedings or
b.) Case history card or
c.) Adjournment minutes sheet (automated registries).

Guidelines for access by the public, including the media, to other types of court documents in criminal cases is also set out in "Access to Court records" on the Provincial Court website.

b. Access to Court Records for matters under the Youth Criminal Justice Act

The *Youth Criminal Justice Act* (*YCJA*) contains both a publication ban and a ban on disclosure of information contained in a record that would identify a young person dealt with under the *Act* (s. 118). That section provides as follows:

> Except as authorized or required by this *Act*, no person shall be given access to a record kept under sections 114 [court records] to 116, and no information

> contained in it may be given to any person, where to do so would identify the young person to whom it relates as a young person dealt with under this *Act*.

In light of s. 118 and the intent of the *Youth Criminal Justice Act* to protect the privacy of young persons who fall within its provisions, Court registries will not provide public access to a youth court file other than to provide, when requested, the court file number, the next appearance date, and the custody status of an individual. Subject to the restrictions contained in the *YCJA* to protect the privacy of young persons, this policy does not limit the ability of members of the public and the media to attend open court proceedings in relation to youth matters.

As an exception, s. 119(1) of the *YCJA* contains a list of people who are entitled to receive court records for a specific period. The media and the general public have no right of access to these files but may apply to the Court for access to the information. A judge may grant access to information under the *YCJA* if she or he is satisfied that the person seeking access has a valid interest in the record and that access is desirable in the interest of the proper administration of justice (s. 119(1)(s)(ii)). Even if a person is granted access to information under such an order, that person cannot further disclose the information unless authorized under s. 129. There are also time restrictions for access provided under s. 119(1) (see s. 119(2)).

The provisions of the *YCJA* restricting access to records do not apply to records relating to an offence for which an adult sentence was imposed if all appeals are completed and the result is still that an adult sentence is imposed (s. 117).

c. Access to Court Records at Court Registries for family law matters in Provincial Court

Rule 20(10) of the *Provincial Court (Family) Rules* [BC Reg. 417/98] provides that no one is entitled to search a court file respecting an application under the *Family Law Act,* a filed agreement or an application under the *Family Maintenance Enforcement Act* except a party, a lawyer (whether or not a lawyer of a party), a person who is named in the application as a respondent or who is named as a party to the agreement, a family justice counsellor, or a person authorized by a judge or a person authorized in writing by a party or a party's lawyer.

Rule 8(15) of the *Provincial Court (Child, Family and Community Service Act) Rules* [BC Reg. 533/95], and Rule 9(14) of the *Provincial Court (Adult Guardianship) Rules* [BC Reg. 30/2001], both provide that only the following are entitled to search a registry file respecting a matter under either the *Child, Family and Community Service Act* or the *Adult Guardianship Act*: a party, a party's lawyer, or a person authorized by a party, by a party's lawyer or by a judge.

Regarding publication of matters that occur in family proceedings, section 3(6) of the *Provincial Court Act* provides as follows:

> In relation to family or children's matters before the court, a person must not publish at any time anything that would reasonably be likely to disclose to members of the public the identity of the child or a party.

d. Access to Court Records for Civil (Small Claims) matters

Members of the public may have access to the court file at the registry where the case is being heard. They may also have access to specific court documents including the Notice of Claim, Reply and Court Orders through Court Services Online at https://eservice.ag.gov.bc.ca/cso/.

Members of the public may have access to case information through Court Services Online or at a public inquiry terminal at the registry where the case is being heard.

As with all information in a court record, access to exhibits is subject to the supervision of the Court and must be balanced against competing rights such as privacy interests. There is no automatic right of the public and media to access to exhibits in Small Claims matters, many of which are confidential and filed by the parties under compulsion by reason of production and disclosure orders. Access may be sought by application to the Presiding Judge or to the Regional Administrative Judge (if there is no judge seized of the matter) of the Court in the location where the proceedings are or were held.

8. MEDIA RELATED POLICIES

The Supreme Court of Canada has recently reconsidered the importance of an open court. In *CBC v. Canada (Attorney General)*, 2011 SCC 2 at para. 1, the Court stated:

> The open court principle is of crucial importance in a democratic society. It ensures that citizens have access to the courts and can, as a result, comment on how the courts operate and on proceedings that take place in them. Public access to the courts also guarantees the integrity of judicial processes inasmuch as the transparency that flows from access ensures that justice is rendered in a manner that is not arbitrary, but is in accordance with the rule of law.

With the ever-increasing use of smartphones and other mobile devices, the Provincial Court, together with the BC Supreme Court and the BC Court of Appeal, jointly developed and issued a "Policy on Use of Electronic Devices in Courtrooms". This policy came into effect on September 17, 2012 and should be read in its entirety at http://www.provincialcourt.bc.ca/news-reports/media-access-policy.

As explained in the Provincial Court's 2012/13 Annual Report:

The Policy generally prohibits the use of electronic devices in courtrooms to transmit and receive text or to take photos or videos. However, accredited media representatives and lawyers who are members of the Law Society of British Columbia may use electronic devices to transmit and receive text in a discreet manner that does not interfere with the proceedings. In addition, the Policy permits accredited media to use electronic devices to audio record a proceeding for the sole purpose of verifying their notes and for no other purpose, such as broadcasting. The Policy retains the discretion of the presiding Judge to determine what, if any, use can be made of electronic devices in their courtroom.

What follows is only a brief summary of some of the Court's media related policies. Consult the "Policies regarding public and media access in the Provincial Court of British Columbia" at http://www.provincialcourt.bc.ca/news-reports/media-access-policy for more information on the following topics:

- Access to proceedings at the Justice Centre
- Access to Digital Audio Recordings (DARS) of proceedings
- Access rules for specific types of cases:
    - Criminal proceedings and traffic court proceedings
    - Family proceedings
    - Civil (small claims) proceedings
- Media Related Policies:
    - Cameras
    - Televising court proceedings
    - Computers
    - Electronic devices in courtrooms
    - Media accreditation policy
    - Judges' Reasons for Judgement
    - Interviews by media

a. Audio Recorders

Generally, the use of audio recorders is restricted in the Provincial Court. However, accredited journalists are permitted to use recording devices in Court to assist the accuracy of their reporting. Journalists are accredited through the process established by the Supreme Court of British Columbia.

Journalists who wish to be accredited should contact the Accreditation Committee. A list of committee members and their contact information is found under Media Accreditation Policy at http://www.provincialcourt.bc.ca/news-reports/media-access-policy .

b. Cameras

The use of cameras or other devices to take photographs or videos while court is in session is prohibited in the Provincial Court. Similarly, visual recording or photographing of the Court while it is not in session is not permitted without the express permission of the Court.

Filming or visual recording requests for educational and court related information purposes may be at the discretion of the Chief Judge. Exceptions to the policy may be made for citizenship ceremonies, swearing in ceremonies of judges or justices of the peace, or for artistic or heritage purposes, if the Chief Judge's approval has been obtained in advance.

c. Televising Court Proceedings

Upon application, the presiding judge has the discretion to allow the Court to be televised or broadcasted, provided that he or she finds that it is in the public interest that the proceedings, or part of them, be televised or broadcast, and that to do so will not:

a. affect the right of a party to a fair trial;
b. cause discomfort to any witness;
c. interfere with any privacy interests that may override the public interest in televising the proceedings;
d. have the potential effect of deterring witnesses in any future similar cases;
e. cause additional expense to the Court; or
f. otherwise potentially hamper the ongoing administration of justice in relation to Provincial Court proceedings.

In assessing the merits an application, the presiding judge may use the BC Supreme Court Practice Direction on Television Coverage of Court Proceedings as a guide. This practice direction can be found at the following link:
http://www.courts.gov.bc.ca/supreme_court/practice_and_procedure/practice_directions/civil/PD%20-%2023%20Television%20Coverage%20of%20Court%20Proceedings.pdf

d. Computers

The use of portable computers is permitted in the Provincial Court provided that it does not disturb the proceedings or interfere with the operation of the Court's own electronic equipment, and that the computers are used solely for the purpose of note-taking.

e. Cell Phones, Personal Digital Assistants (PDA's) and Data Transmission Devices

Although the use of electronic devices in Provincial and Supreme Court courtrooms to transmit and receive text is generally prohibited, accredited media and lawyers may use

electronic devices to transmit and receive text in a discreet manner that does not interfere with the proceedings. However, presiding judicial officers retain discretion to determine what, if any, use can be made of electronic devices in a courtroom.

f. Interviews by Media

As judges of the Court speak through their decisions and Reasons for Judgment, they do not comment on specific cases that are or have been before the Court or that may come before the Court in the future. Members of the media seeking general information about the Court are welcome to contact Mr. Gene Jamieson, Legal Officer, Office of the Chief Judge [604-660-2864].

ADDENDUM “A”

The Law Courts Education Society of B.C.

FACT SHEET: SENTENCING

Sentencing Objectives: The Criminal Code requires that a judge consider one or more of the following objectives in sentencing.

- Denunciation of unlawful conduct – whether a particular sentence will express society’s disapproval of the offence.
- General deterrence – whether people may be less likely to commit this type of offence if they know they will receive a certain penalty
- Individual deterrence – whether the accused needs to be deterred from committing further offences by a particular sentence.
- Protection of the public – whether the offender needs to be kept away from the public by imprisonment.
- Rehabilitation – whether a sentence could change an offender’s behaviour and prevent further offences.
- Reparation for harm to victims or the community and promoting a sense of responsibility in offenders – whether a sentence could achieve these goals

What are some factors the judge must consider when sentencing?

- The circumstances of the offence, its seriousness, and the offender’s degree of responsibility
- The offender’s circumstances, attitude and history, including the presence or absence of a criminal record
- the impact on the victim
- sentences imposed for similar offences by similar offenders – a sentence must be within the range of sentences established by appeal courts and the Supreme Court of Canada

What types of sentences can be given?

Discharge: Discharges are not available for offences where the Criminal Code provides a minimum penalty or where the maximum penalty is fourteen years or more jail and where it is contrary to the public interest.

- Absolute Discharge: This may be granted to an offender if it is in the best interest of the offender and not against the public interest. It is granted immediately without terms or conditions and the effect is that the offender will not have a criminal record. This might happen in the case of a shoplifter who has no previous history with the police and who is unlikely to re-offend.

- Conditional Discharge: This has the same effect as an absolute discharge but the accused must comply with probation conditions set by the judge, such as completing community service hours, before the discharge becomes effective. If the conditions are not met, then the discharge can be revoked and the person can be re-sentenced.

Suspended Sentence with a Probation Order: The judge orders the offender to obey the conditions listed in a probation order and be of good behaviour for a period up to three years.

- Probation Order: It may also be imposed along with other types of sentences like a fine or jail. The conditions may include reporting to a probation officer, abstaining from consuming alcohol or drugs, remaining in the jurisdiction of the court, living in a specific residence, non-association with the victim or others, a curfew, attendance at school, attendance at rehabilitation or addiction programs, a requirement to make suitable efforts to find work, community service hours with a community agency, or any other conditions that are appropriate. It is a criminal offence to disobey the rules of a probation order.

Order for Compensation or Restitution: The offender may be ordered to compensate a victim for loss of or damage to property caused by the commission of the crime (compensation) or for the return of the property to its owner (restitution).

Suspension of Privilege: An offender's driver's licence *may* be suspended for certain driving offences and *must* be suspended for impaired driving and driving while prohibited. An offender must be prohibited from owning or being in possession of a firearm in some cases, and may be in other cases.

Fine: The offender must pay a fine at the court. Fines paid are deposited in the provincial government's General Revenues.

Imprisonment: The Criminal Code says an offender should not be deprived of liberty if less restrictive sanctions may be appropriate, and it requires a judge to consider all available sanctions other than imprisonment that are reasonable in the circumstances, before imposing a jail sentence.

- **Conditional Sentence Order:** Except for certain serious offences described or listed in the Criminal Code and offences for which a minimum penalty is prescribed, if the judge believes a jail sentence of less than two years is required, the judge may order that it be served in the community unless to do so would endanger the safety of the community, or be inconsistent with the fundamental purpose and principles of sentencing.

- **Jail sentence:** Where the circumstances require, a judge may sentence an offender to a term of imprisonment. Summary conviction (less serious) offences may have a maximum term of six months and the most serious indictable offences have a maximum term of life imprisonment. There are certain offences, such as assault causing bodily harm, where the maximum sentence on summary conviction is 18 months jail.

What is a pre-sentence report?
A pre-sentence report prepared by a probation officer states the age, education, family support, employment, health problems, addictions, and previous convictions of the offender. It may include interviews with the victim and people close to the offender such as family, friends, a teacher, or an employer. The report helps the judge to learn more about the accused before sentencing.

What is a victim impact statement?
Before deciding on the sentence, the judge will consider the victim's statement about the effect of the crime, if it is presented by the prosecutor. The statement must be in written form and it must be made by the person to whom harm was done or be made by a person who suffered physical or emotional loss as a result of the commission of the offence. If the victim is dead, ill, or incapable of making the statement, then a relative of that person may make the statement. Victims may read their written statement in court.

What is a sentencing circle?

Not a sentence, but a way of conducting the sentencing hearing, in which the offender, the victim, their families, and representatives of community groups that might assist in rehabilitating the offender and supporting the victim, meet to discuss the impact of the offence, and what might be an appropriate plan for a restorative, rehabilitative sentence. The circle then recommends a sentence to the judge. Sometimes, Crown and defence lawyers and the judge participate in the circle, in which every member is an equal participant, in contrast to the hierarchical structure of a hearing in court.