



THE PROVINCIAL COURT
OF BRITISH COLUMBIA

Main Street Criminal Procedure Committee

Backlog Reduction Initiative

Report on Backlog in Vancouver Adult Criminal Court

January 2005

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A. Introduction

In early January 2004 it became apparent that, for a number of reasons, court case delays in Vancouver Adult Criminal Court (222 Main Street) were at an unacceptable level. According to a semi-annual survey conducted by the Office of the Chief Judge, the Next Available Trial Dates for cases taking one-half day were assessed at 12 months. The standard set by the Chief Judge is 6 months or less.

In February 2004, the Chief Judge and the Attorney General agreed that the Main Street Criminal Procedure Committee (the “Committee”) would focus on decreasing the delay. The Committee is made up of representatives from the Provincial Court Judiciary, the Criminal Justice Branch and the Court Services Branch of the Ministry of the Attorney General, the Canadian Bar Association and Law Society, the Legal Services Society and Sheriffs Services¹. The parties agreed to work together to address any issues that might be contributing to the delays.

On January 20, 2004, at the request of the Chief Judge, the Committee adopted the mandate contained in Appendix B, and committed to explore the issues that could have been contributing to the delays. In particular, the Committee would consider whether improvements could be made in the following areas:

- courtroom capacity and maximizing usage;
- the availability and effective use of judicial resources;
- compliance with the Criminal Caseflow Management Rules² including the taking of elections at the arraignment hearing;
- the rate of “trial date collapse” (situations where trials do not proceed on a given date);
- Crown file ownership and the level of Crown case preparation at the arraignment and trial confirmation hearings;
- the role of counsel and the judiciary in pre-trial case management for lengthy trials;
- communication procedures regarding case collapse and changing time estimates between counsel, and with the judicial case managers.
- compliance with the Crown charge approval standard and/or quality control throughout a trial;
- consent bail releases;
- and any other factors the Committee believed contributed to backlogs or inefficiencies.

¹ The members of the committee are listed in Appendix A.

² *Criminal Caseflow Management Rules*,

<http://provincialcourt.bc.ca/aboutthecourt/criminalandjuvencases/criminalcaseflowmanagementrules/index.html>.

On February 16, 2004³, the Attorney General and the Chief Judge announced the backlog reduction initiative and issued a media release stating:

B.C. and the Provincial Court are working together on a new initiative to get court cases to trial faster, Attorney General Geoff Plant and The Hon. Carol Baird Ellan, Chief Judge of the Provincial Court said today. A key issue being addressed is delays for criminal cases at Vancouver's Provincial court, 222 Main Street, which can take up to 11 months to go to trial... The Vancouver Backlog Reduction Initiative will cut waits at 222 Main Street significantly by Dec 31, 2004. And as part of that initiative, two new judges are being added to B.C.'s Provincial court system. ...the initiative's Main Street Criminal Procedure Committee... is looking at ways to increase courtroom efficiencies through optimum utilization, adherence to criminal case flow management rules, the role of counsel and the judiciary in pre-trial case management for long trials, and other improvements. The Committee includes senior members of the judiciary, Crown counsel and government.

The Committee met on February 10, March 2, April 20, June 22, September 14, October 12, November 16, and December 14, 2004.

The first part of this report summarizes the Committee's discussion about the topics in its mandate and the reforms that were made in these areas to address the issues. Other reforms that are not part of the mandate are also included in the report.

As of December 14, 2004, the delays, as measured by the Office of the Chief Judge, have been reduced to 7 months. Recommendations to maintain or further reduce the delays are included in the final section of this report.

B. Courtroom Sufficiency and Optimum Utilization

Prior to the initiative that was taken to address the delays, courtrooms were often closed during the week. For the convenience of all users, long trials were booked on the basis that judges' Judgment Days⁴ would usually be on Fridays. To allow more judges to sit at the Main Street Courthouse, the judges' schedule was revised to distribute long trial Judgment Days throughout the week. Also, judges were encouraged to take their vacations during "short weeks" (statutory holiday weeks) to make more courtrooms available for visiting judges.

These changes have made it possible to maintain a steady rotation of visiting judges and have resulted in the full use of all the courtrooms available at Main Street. With 16⁵ available courtrooms, or on average, 352 court days per month, full use amounts to a complement of approximately 20 resident judges, or fewer resident judges with a rotation of visiting judges from other locations.

Members of the Committee indicated that currently all areas within the building are at or over capacity and some users are competing for space. The Committee agreed

³ http://www2.news.gov.bc.ca/nrm_news_releases/2004AG0011-000096.htm

⁴ Judgment Days are non-sitting days for judgment preparation and research

⁵ See below regarding use of Courtroom 100

that a long-term vision for the Provincial Court would include a new courthouse; perhaps a multi-jurisdictional building where a variety of cases could be heard, with accompanying efficiencies which would result in less daily strain on the resources of Crown Counsel. This is discussed more fully in the Committee's recommendations.

Given the results of this initiative, and if the steps and recommendations made in this report continue, it appears that a complement of the equivalent of 20 resident judges would allow the district to keep up with current caseloads, and likely see delays brought down to six months.

However, if caseloads increase due to changes in population or crime rates, it seems likely that the present courthouse will not be able to meet these additional demands.

C. Judicial Resource Sufficiency and Optimum Utilization

The changes to judicial complement at 222 Main Street over the relevant period are outlined in full-time equivalents ("FTEs") below:

As of December 31, 2003:	16.6 resident ⁶ judges, 0.9 (2 senior part time judges) ⁷	-----
	Total: 17.5 judges	
As of April 1, 2004:	16.6* resident judges 0.9 (2 senior part time judges) 2.0 judges rotating from Robson and Richmond	-----
	Total: 19.5 Judges	
As of July 1, 2004:	16.6* full-time judges 0.45 (1 senior part time judge) 0.25 Victoria judge rotating part time 2.0 judges rotating from Robson and Richmond	-----
	Total: 19.3 Judges	
As of Sept. 30, 2004:	15.6* resident judges 0.9 2 senior part time judges 0.25 Victoria judge rotating into Main Street (0.25) 2.00 rotations Robson and Richmond	-----
	Total: 18.75 Judges	

⁶Judges assigned to 222 Main Street. Includes one judge resident .6 at Main Street and .4 at Robson, and one judge dedicated to Drug Court.

⁷ Senior part time judges generally equal about .45 FTE.

Projected to April 1, 2005:	14.1 resident judges
	2.25 5 senior part time judges
	2.00 rotations from Robson Square and Richmond
	<hr/>
	Total 18.35 Judges

In early 2004 the Chief Judge's Office assigned, in addition to the complement of judges to Main Street, ad hoc and daily assistance to the district. This assistance amounted to the equivalent of less than one judge over a four month period. These additional resources allowed full use of courtroom space; however, short term "visiting" judges tended to produce fewer guilty pleas or completed cases. This issue is discussed more fully below in recommendations.

D. Adherence to the Criminal Caseflow Management Rules including the Taking of Elections at the Arraignment Hearing

1. Initial Appearance Court

The Criminal Caseflow Management Rules provide for initial appearances to be conducted by a judicial case manager. At Main Street, initial appearances were held in a courtroom, Court 100, by a judge. Early in the Committee's mandate, a decision was made by the judiciary to staff the initial appearance court with a judicial case manager.

In July 2004, the Chief Judge added a full time judicial case manager for this purpose. Although this reduced the number of courtrooms available for judges to preside in, the judiciary perceived this to be an effective method to save judicial time, freeing up the equivalent of approximately 1.25 judges for trial scheduling.

The effect of this change is discussed below in Section K.6.

2. Elections as to Mode of Trial

On November 20, 2003, the Chief Judge issued a practice directive:

Effective December 1, 2003, where an election is required to be put to an accused pursuant to Section 536 of the Criminal Code, that election shall be put to an accused and the accused shall elect their mode of trial at or before the arraignment hearing.

The purpose of the directive was to determine whether a court date was for a trial or a preliminary hearing which would make it easier to schedule the appropriate amount of court time.

The Committee agreed that this new procedure created more certainty about the nature of the proceedings that were set for hearing, and honed time estimates. It also prepared Main Street for later changes to processes that were required by amendments to the preliminary inquiry sections of the Criminal Code. These changes were addressed by the following practice direction:

Effective June 1, 2004, all elections pursuant to section 536(2) of the Criminal Code must be taken at the arraignment hearing, and all procedures prescribed in sections 536(4) and 536.3 must be completed at the arraignment hearing. No trial or hearing date shall be set in a matter requiring an election if an election has not been recorded or if the procedures prescribed in sections 536(4) and 536.3 have not been completed.

These changes made Main Street procedure consistent with other districts, and increased the accuracy of court time estimates.

3. Arraignment Hearings on Summary Conviction Matters

On November 20, 2003, in response to Associate Chief Judge A.J. Spence's April 2002 *Report to the Chief Judge on Criminal Caseload Management Rules*, the Chief Judge issued a practice direction dealing with arraignment hearings on summary conviction matters:

Effective December 1, 2003, in summary conviction proceedings or where an accused is charged with an offence listed in Section 553 of the Criminal Code, if both the prosecutor and the accused's legal counsel have filed a completed Arraignment Report, an arraignment hearing shall not be set and a date for trial may be fixed if both the prosecutor and the accused's legal counsel consent in writing to waive the hearing. Notwithstanding the foregoing, an arraignment hearing shall be set if a justice or judge considers it necessary in a particular case.

The practice at 222 Main Street had already been to "bypass" the arraignment process in cases where counsel indicated they were ready to set a trial date before the judge at the first appearance. The judge would either hold a brief arraignment hearing without reports being filed, or forgo the arraignment process and allow the parties to set a trial date.

When the initial appearance court judge was replaced by a judicial case manager, the practice directive allowed arraignment hearings to be waived in summary matters. Because the judge in Court 100 had been holding formal arraignment hearings on some summary matters, there would also be savings in court time by allowing these to be waived. However, the replacement of a judge with a judicial case manager may have created less flexibility for arraignment hearings on indictable matters and sentencing in guilty pleas. After July 1, 2004 cases requiring arraignments or sentencing had to be moved to courtrooms staffed by a judge. The effects of this change are discussed more fully below in section K.6.

E. The Rate of Trial Date Collapse

Prior to the Criminal Caseflow Management Rules being introduced, trial dates collapsed at a rate of approximately 70%. After implementation of the rules, efforts were made to monitor changes in the collapse rate but reliable assessments were not available. Anecdotal evidence from the judicial case managers at Main Street and other members of the Committee indicate the trial collapse rate still rests at approximately 70%.

Improved statistics on trial rate certainty will be available when the Court Performance Measurement System, currently under development, is in place. However, in the experience of the Committee members, the 70% trial collapse rate has remained consistent at Main Street for many years. It is higher than most criminal courts in the province. This is understandable, due to the fact that many defendants and witnesses at Main Street suffer from substance addiction, mental illness and other social challenges.

One of the objectives of the Criminal Caseflow Management Rules was to increase trial certainty, but the Committee felt that any reforms or initiatives will be unlikely to reduce the trial collapse rate at Main Street because more witnesses or accused persons do not attend.

Another intention of the Rules was to encourage earlier guilty pleas. This has always been encouraged at Main Street through a disposition court. The Committee also identified additional initiatives, such as changing the guilty plea scheduling policy, and establishing a front-end team from the Crown to identify matters for disposition earlier in the process. While this may not decrease trial collapse rates, it could result in scheduling fewer matters for trial.

A trial day is five hours. Before the introduction of the Rules, trial days were double or triple booked. When the Rules were implemented, the Chief Judge's guidelines for trial bookings were changed to recommend that fewer hours be set per trial day. The guidelines are now twelve hours as of the trial confirmation date and eight hours after. This schedule assumes that most matters that were not proceeding would have been identified by the trial confirmation date. This practice was not as successful at 222 Main Street as in other courthouses in the province, for reasons already discussed.

The natural response to a constant 70% trial collapse rate would be to return to triple booking available court hours. This would allow enough cases to be moved between trial courts so that each judge sat a full day. This has proven not to be a workable solution, however. Because there is no way to predict which of the cases will proceed, with current resources it may require one Crown Counsel to prepare, for example, a week-long multiple robbery case, a two-day sexual assault, and a day-long list of shorter cases all for a single day of trial time. Main Street is the only adult criminal facility for Burnaby and Vancouver and criminal cases are more complex and

take longer. In the past, when cases were easier to prepare, a higher booking rate was commonplace, and fewer Crown resources may have been required.

In November 2004 as a response to a period of unusually high trial collapse, the Administrative Judge directed the judicial case managers to book up to 16 hours per day. Increasing the number of hours booked caused great concern that Crown resources would not be able to prepare three days of cases each day. At its last meeting, the Committee discussed the booking practice and agreed that the judicial case managers were usually able to determine when a trial list could be increased beyond the twelve hour mark and when it was not reasonable to do so, based on the nature of the cases and available Crown resources. The Committee decided to rely on the expertise of the judicial case managers, with input from the Administrative Judge and the Crown, about the number of trial hours to book.

To maintain reasonable use of the court, and due to the higher collapse rate at 222 Main Street, the number of hours booked for trial will have to be higher than the provincial standard. It will also be necessary to ensure that Crown staffing levels are maintained. Greater resources may be required at Main Street than at other courthouses with lower collapse rates.

F. Crown Ownership and the Level of Crown Preparation at the Arraignment and Trial Confirmation Hearings

With renewed support from the Court, Crown file ownership and preparation has resumed at the pre-trial stages at Main Street. Since September 2004, dedicated senior Crown Counsel have been assigned to the pre-trial stages of the court process. Each Crown has taken a portion of the caseload from the initial appearance through to the fix date hearing. The Court and Crown are working together to keep files with the assigned Crown Counsel so that file review, disclosure, and discussions with defence counsel are enhanced.

G. The Role of Counsel and the Judiciary in Pre-Trial Case Management of Long Trials

Before the initiative, pre-trial conferences for lengthy trial matters were held approximately a month before the trial. The Committee collected a list of 26 trials that would require more than eight sitting days, representing a total of 400 trial days. Early pre-trial conferences were set for these trials, to try to determine which cases would go to trial, and to encourage the Crown and defence counsel to discuss issues that might shorten the trial time required. The Administrative Judge directed that cases longer than eight sitting days would not be set for hearing until they were pre-trialled by the Administrative Judge or another judge.

Fifty-one trial days were saved as a direct result of the pre-trial conferences. This was as a result of the accused pleading guilty or because the Crown entered a stay of proceedings. An additional 195 trial days were saved as an indirect result of the pre-trial conferences. This was a result of the charges being resolved after the pre-trial conference or because the estimated time for trial was reduced due to the pre-trial conference. Some of these days may have been saved through attrition; however by identifying the time savings at an early stage it resulted in more efficient scheduling.

Pursuant to section 625.1 of the Criminal Code, pre-trial conferences were moved from busy courtrooms to judges in chambers (subject to the discretion of the presiding judge to hold the conference in a courtroom). Conferences were set outside regular court hours which resulted in significant time savings. To address any concerns about holding pre-trial conferences in chambers, decisions about the trial were placed on the record immediately after the conference.

H. Communication between Counsel and with the Judicial Case Managers Regarding Case Collapse and Changing Time Estimates

Effective communication between judicial case managers and both Crown Counsel and the defence bar about the potential collapse or downsizing of cases set for hearing has been a major strength in case management. It is not unusual for counsel to voluntarily offer this information well before the trial date.

Case managers are pro-active in "monitoring" trials for last minute changes that will affect up-coming trials. They try to contact some Crown Counsel assigned to specific cases, and contact all defence counsel one week before the trial date. Counsel are helpful in providing crucial information, which the case managers keep confidential unless otherwise requested. This sharing of information assists the daily balance of cases and can also free up judicial resources to be lent to other jurisdictions on an emergency, short term basis.

Case monitoring sometimes also encourages Crown and defence counsel to renew discussions which often results in less time being required for trial or outright resolution of the matter. For cases longer than eight sitting days, judges now hold pre-trial conferences in chambers before setting the matter for trial. As a result, case managers receive valuable information earlier that may result in a reduction of trial time or a resolution.

I. Adherence by the Crown to the Charge Approval Standard and/or Quality Control through Trial

During the fall of 2002, the Criminal Justice Branch audited cases in the three largest courthouses in the province to assess quality control and determine whether the

charge standard was consistently applied by Crown Counsel. In early 2003, the results of the audits indicated that the charge standard was being applied consistently at Main Street. The team of senior prosecutors assigned to arraignment court on a rotating basis at 222 Main Street will provide ongoing assessment of the application of the charging standard.

The Federal Crown has worked with the RCMP and the Vancouver Police Department to ensure that charge approval standards are maintained at the front end.

J. Consent Bail Releases

In February 2004, after discussion between all the justice partners involved, it was agreed that “consent release” bail procedures would be re-introduced at Main Street. This procedure allows a Court Services Justice of the Peace to release an accused person on terms agreed upon by defence counsel and the Crown, without requiring a bail hearing in the busy remand courts or the Justice Centre. This change has had the result of diverting an average of seven to ten people per day, freeing up more court time for cases that require additional attention.

K. Other Factors that the Committee Believes May Assist with Backlogs or Inefficiencies

1. Front-end Team

Other efficiency initiatives the Committee oversaw include the establishment by Crown Counsel of a team of four experienced prosecutors who assumed responsibility for the Court 307 arraignment process on a rotating basis. This ensures that the Crown charge approval standard is applied, and that court trial time efficiencies are increased wherever possible by encouraging early guilty pleas and/or narrowing issues for trial purposes. Defence counsel representatives on the Committee support this initiative as a positive step that is producing results.

2. Alternative Measures

Members of the Committee attended a meeting of the Vancouver Criminal Subsection of the Canadian Bar Association to encourage more use of the Crown’s alternative measures program. They reminded members that the alternative measures policy has a broader scope than the previous diversion policy. Defence Counsel have been encouraged to review the policy which is available on the Ministry’s web site. They were asked to consider whether comprehensive submissions to Crown Counsel for consideration of alternative measures could be made more often for their clients. If

Crown Counsel believes that the accused may qualify under the policy, the Court has been encouraged to inform self-represented accused about alternative measures.

3. Extended Hours

The extended hours program has been in place for many years and has also created efficiencies at Main Street. Crown Counsel is present weeknight evenings and, with duty counsel present, on weekends and statutory holidays, to conduct in-custody charge approvals and bail hearings.

4. Case Movement

Before the initiative, lengthy provincial cases were moved from Main Street to Robson Square courthouse. This proved unproductive and resource-inefficient because of the trial collapse rate and a lack of backup lists or cases. As part of the initiative, the Chief Judge issued a directive moving all federal tax prosecutions to Robson Square. This directive has proven more successful because these cases are prosecuted by a specific group of prosecutors and have a higher rate of trial certainty.

5. Guilty Plea Procedures

The Committee revised the guidelines for the scheduling of guilty pleas. A copy of the revised procedure, adopted by the Committee and implemented by the Administrative Judge, is attached as Appendix C.

The guilty plea “call ahead” procedure is designed to encourage early guilty pleas in the disposition and remand courts, and discourage late or trial date pleas, by creating some inflexibility in moving cases out of trial courts after the trial confirmation date.

The guidelines allow cases to be moved to the remand or disposition court for a guilty plea before the trial confirmation date, but not to be moved after without the consent of the assigned Crown. The Committee agreed that disposition before a judge of choice should be assisted before confirmation of the trial, but less so, afterward.

6. Use of Judicial Case Manager in Initial Appearances

As mentioned above in Section D.1, one of the most significant changes since July 1, 2004 has been staffing the initial appearance court with a judicial case manager sitting as a Justice of the Peace. Before July 1st a judge presided in Court 100 and dealt with many preliminary matters, including adjournments, arraignment hearings for summary conviction charges, and guilty pleas. At the time this change was made

in 2002, it was intended to increase first appearance guilty pleas and same-day arraignment hearings.

However, few cases were arraigned or completed in Court 100. A decision was made by the judiciary to replace the judge in Court 100 with a judicial case manager. They can conduct most matters in an initial appearance, except sentencing and full arraignment hearings. Because relatively few guilty pleas were entered in Court 100, it was felt that this change would help reduce delays by adding an additional full time judge (1.25 FTE) to the Main Street trial court complement, as discussed above.

The Committee has an ongoing concern that removing the judge from Court 100 may result in a decrease of early guilty pleas, since accused persons who wish to plead guilty must to be moved to a court where a judge is presiding.

In other court locations using the same model, this concern has been addressed by judicial case managers, court staff and Crown counsel working together to ensure that persons wishing to plead guilty to a charge are promptly taken to a sitting judge in an available court. At Main Street, this would include the remand courts, Court 101, 102, 307, or a trial court which has time available because cases have collapsed.

Because senior Crown counsel continue to be assigned to Court 100, file transfers may be handled efficiently, or taken by these counsel to available courts. As well, out-of-custody Duty Counsel are available in Court 100 to help self-represented accused who wish to enter a guilty plea. All of these measures may be used to ensure that no person who is prepared to enter a plea on an initial appearance should be turned away because a judge is not available.

It is too early to assess if guilty pleas will decrease due to this change in process. As of July 1, 2004, statistics show a reduction in guilty pleas and an increase in the number of trials set; but the months for which statistics are available are not considered typical of the situation at Main Street. The summer months are generally less active due to vacation periods. Workloads do not normally reach the average until mid-September to early October. The Committee believes that monitoring of the statistics will be needed to determine whether the change to first appearance court has had a net positive effect on available trial time.

It is unclear that the current method of data analysis about pleas is accurate. For example, it is unknown whether plea statistics reflect each person, or the statistics represent each case file.

Also, it is not clear whether the statistics capture the files where stays of proceedings are entered at the same time as a guilty plea. Finally, it does not appear that all guilty pleas that begin in Court 100 and go to remand or trial courts are captured.

The Committee understands that the Court Performance Measurement System, under development, includes case completion and on-time case processing measures which will help in assessing the effectiveness of the caseload process.

Another issue is whether time is lost because guilty pleas and arraignments currently must be moved to another court.

It doesn't seem likely that a great deal of time will be added to the Arraignment Court list because when the judicial case manager was moved into first appearance court, a practice direction was issued allowing the waiver of arraignment for summary matters (discussed above in D.) which will decrease the need for arraignments. Again, this situation needs to be monitored. If all guilty pleas and indictable arraignments were moved to Court 307, rather than other available courts, the volume would likely be unmanageable.

L. Recommendations

The Committee is optimistic that delays at Main Street can be maintained at seven months or less, if procedures to maximize court time and space are maintained. The Committee makes the following recommendations to reduce further and continue addressing the delays at 222 Main Street:

1. Courtroom Sufficiency and Optimum Utilization

The Main Street courthouse could be operating at full capacity. If any of the current users require more space, or more than 20 judges are required because of increased caseloads, the building cannot accommodate these increased demands.

In most other areas of the province multi-jurisdictional facilities allow for greater flexibility and trial date use. It is the view of the judiciary that this type of approach would improve maximum use of court resources at 222 Main Street. This would allow movement of civil or family cases between courtrooms rather than relying upon the availability of assigned Crown. The Committee recommends that consideration be given to the construction of a multi-jurisdictional facility to meet the physical needs of the Vancouver/Burnaby adult criminal cases, as well as the civil and family/youth cases currently dealt with at Robson Square.

2. Judicial Resource Sufficiency and Optimum Utilization

The judge complement at Main Street should be kept at maximum, as close to 20 resident judges or the equivalent, until delays are brought below the Chief Judge's standard of six months for a half day trial. This can be managed by having full time resident judges at Main Street, or by having judges rotate from other locations. Rotations keep judicial assignments flexible, ensuring that judges posted to Main

Street are kept current with other subject matters in which the Court presides. Since approximately 1992, this policy has been articulated by the Chief Judge's Office.

This type of flexibility must be balanced with the need to maintain a group of regular judges, to meet the need for some predictability and certainty for counsel and trial schedulers. Over the past few months it has been noted that if visiting judges do not return on a regular basis and are not known to counsel there is a higher incidence of incomplete cases.

The best solution for judicial administrative flexibility and efficiency requires that there are sufficient resident judges in the greater Vancouver region, including Richmond, to rotate a group of visiting judges through 222 Main Street on a consistent basis, in addition to the regular judges assigned to Main Street.

3. Adherence to the Criminal Caseload Management Rules

The staffing of Court 100 with a judicial case manager should be monitored to ensure that there is a net saving in trial court time, and not a net loss due to fewer guilty pleas and more matters being set for trial. The Committee hoped to compare pre and post-initiative statistics to evaluate changes such as this one, but the statistics are not available. It is recommended that once this data is able to be collected, the front-end caseload process at Main Street be re-assessed.

Taking elections at the arraignment hearing and waiving arraignment hearings for summary conviction matters should be continued, and efforts should be made to ensure that matters in Court 100 which require a judge are managed in a timely fashion. These changes should also be monitored to determine whether there is a need for judges to be more accessible at an earlier point in the process.

4. The Rate of Trial Date Collapse

The judicial case managers should continue to ensure that an optimum caseload is set for each trial list based on existing Crown resources. The actual booking rate should depend on the mixture of cases on the list and be left in the discretion of the Administrative Judge and the judicial case managers.

The Committee recommends that an optimum booking rate would be up to sixteen hours per day, given the consistency of the 70% trial collapse rate. In order to manage an optimum booking rate, enough Crown resources will need to be provided. The Committee recommends that Crown resource requirements be assessed to achieve triple booking. The Committee also recommends that if the booking rate is increased to this level, it should be closely monitored to ensure that it maximizes courtroom and judicial resource use without producing excessive and unmanageable workloads for Crown and the judiciary.

5. Crown Ownership and the Level of Crown Preparation at the Arraignment and Trial Confirmation Hearings

The Committee recommends that the justice system participants at 222 Main Street continue to take steps to promote Crown ownership and the ability of prosecutors to prepare as early in the process as possible.

6. Pre-Trial Case Management of Long Trials

The Committee is of the view that the changes to pre-trial case management have had a positive effect and should be continued.

7. Communication between Counsel and the Judicial Case Managers

Case monitoring by judicial case managers and communication between counsel regarding trial date collapse seems to be effective, and should be maintained.

8. Adherence to the Charge Approval Standard through Trial

There appear to be no problems in this area, and current practices should be maintained, including the encouragement of alternative measures.

9. Consent Releases

The Committee recommends that steps continue to encourage consent releases before Court Services Justices of the Peace, where appropriate.

10. Other Measures

The additional strategies undertaken by the Committee and the various members, outlined in section K above, seem to be effective. These strategies should be maintained, and monitored for continued effectiveness.

M. Future of Committee

The Committee recommends that its work be continued through the 222 Main Street Users' Committee. Most of the members of that Committee are also members of the

Main Street Criminal Procedure Committee with the exception of the defence lawyers. We therefore recommend the addition of a defence representative from this Committee to the Users' Committee for transition and continuity. The Committee is of the view that the Committee's current CBA representative, Chris Johnson, should be invited to join the Users' Committee, and that the Users' Committee should continue to monitor and maintain the measures undertaken in the Backlog Initiative, with assistance and oversight from the Office of the Chief Judge.

The Chief Judge has tendered her resignation as Chair of the Main Street Criminal Procedure Committee, Backlog Initiative, with the delivery of this report, and extends her sincere thanks to the participants for their diligence, cooperation, and wisdom.

Respectfully Submitted:

Carol Baird Ellan, Chief Judge
Chair, Main Street Criminal Procedure Committee, Backlog Initiative

APPENDIX A

Main Street Criminal Procedure Committee: Backlog Reduction Initiative

1. The Honourable Chief Judge Carol Baird Ellan
2. The Honourable Administrative Judge William J. Kitchen
3. The Honourable Judge Catherine Bruce
4. Robert Gillen, Q.C., Assistant Deputy Attorney General, Criminal Justice Branch (AG)
5. Michael Hicks, Regional Crown Counsel
6. Peter LaPrairie, Supervising Counsel, Department of Justice
7. Martha M.M. Devlin, Department of Justice Canada
8. Marion E.J. Paruk, Crown Counsel, Provincial Court of British Columbia
9. Bill Grandage, Regional Director, Lower Mainland Region, Ministry of Attorney General
10. Leanne Macomber, A/Manager, Court Services Branch
11. David Griffiths, Manager, Field Operations, Legal Services Society
12. Simon R.A. Buck, WILSON & BUCK
13. Christopher Johnson, JOHNSON DORICIC FOSTER
14. Grant Marchand, Administrative Judicial Case Manager, Office of the Chief Judge
15. Catherine Johnstone, Judicial Case Manager
16. Karen Golightly, Supervisor – Court Clerk, Provincial Court of British Columbia
17. Gene Walsh, Sheriff, Provincial Court of British Columbia, 222 Main Street

APPENDIX B
Main Street Criminal Procedure Committee

Backlog Reduction Initiative

January 2004

Committee Mandate

It is the mandate of the Main Street Criminal Procedure Committee during the backlog reduction initiative to review and consider case flow, resource utilization, and efficiency of process at 222 Main Street, in an effort to reduce backlogs (as measured by the Chief Judge's Next Available Date Survey) to 8 months or less by December 31, 2004.

During the backlog reduction initiative, the Committee will be chaired by the Chief Judge, or in her absence, the Administrative Judge. Once the initial mandate has been achieved, the Committee will be chaired by the Administrative Judge, and shall meet thereafter as required to improve or monitor efficiencies, until Main Street backlogs are brought within provincial standards.

While recognizing that the members of the Committee have particular areas of authority and responsibility, and in some cases conflicting duties, the Committee will have particular attention to whether improvements can be made in the following areas:

- courtroom sufficiency and optimum utilization;
- judicial resource sufficiency and optimum utilization;
- adherence to the Criminal Caseload Management Rules including the taking of elections at the arraignment hearing;
- the rate of trial date collapse;
- Crown ownership and the level of Crown preparation at the arraignment and trial confirmation hearings;
- the role of counsel and the judiciary in pre-trial case management for long trials;
- communication between counsel, and with the Judicial Case Managers, regarding case collapse and changing time estimates;
- adherence by the Crown to the charge approval standard and/or quality control through trial;
- consent bail releases;
- such other factors as the Committee considers may contribute to backlogs or inefficiencies.

The Committee and its members shall take steps to implement any measures that are within the authority of the Committee or its respective members to implement, as it

identifies them. Where such measures are outside the authority of the Committee or its members, it shall make recommendations to the person or persons who have authority in respect of the recommended measure.

Any measures agreed upon by the Committee at any of its meetings shall be recorded in minutes of the meeting. Other than that, discussions of the Committee will be confidential.

This mandate shall be adopted by the Committee members at its January 20, 2004 meeting, but may be amended prior to adoption following discussion with the members and with the agreement of the Chief Judge.

APPENDIX C

Memorandum

Guilty Plea Rules and Procedures March 2004

[This memorandum supersedes the relevant section of the Call Ahead Rules and Procedures dated July 15, 1998]

Effective immediately the scheduling of guilty pleas will follow these guidelines:

- 1) All dispositions that will take more than 20 minutes in total and all dispositions on cases which are scheduled for over two days' court time must be referred to the Judicial Case Managers for scheduling.
- 2) Dispositions on matters that have not yet been fixed for trial or hearing may be conducted in Arraignment Court or the applicable remand court, or may at any time be scheduled by the Judicial Case Managers into an available court.
- 3) Dispositions on matters that have been fixed for trial may at any time prior to the trial confirmation hearing date or if there is no trial confirmation hearing, the date that is one month prior to the scheduled trial date, be called ahead to Arraignment Court or the applicable remand court, or may be scheduled through the Judicial Case Managers into the assigned trial court, or if that court is unavailable another available court as assigned by the Judicial Case Managers.
- 4) On or after the trial confirmation hearing or if there is no trial confirmation hearing, the date that is one month prior to the scheduled trial date, a matter will remain in the scheduled trial court for disposition, but may be called ahead to that courtroom for disposition on a date other than the trial date in accordance with (1) above.
- 5) It is the responsibility of the person calling a matter ahead for guilty plea to ensure that the assigned prosecutor is agreeable to the matter being dealt with on the plea date, and to take a copy of the call ahead form to the applicable Crown office after it is filed.
- 6) The Registry deadline for filing the applicable call ahead form is 11:30 a.m. the day before the matter is to be heard unless the prosecutor has consented to shorter notice.

Administrative Judge