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Introduction

On January 30, 1998, the Honourable Jon Havelock, Q.C., Minister of Justice and Attorney General of Alberta announced plans to convene a Summit on Justice. In making this announcement the Minister noted that, "Studies show clearly that the public's perception, attitude and understanding about the justice system is at a low point and we want to take whatever steps are necessary to restore their confidence." The Minister also stated, "We must understand how the public perceives the system to be working and empower the public to assist us in changing the system to address the concerns regularly expressed." The Summit on Justice will be held in Calgary in January 1999.

Why a Summit on Justice?

The purpose of the Alberta Summit on Justice is to make a good justice system better.

What does the summit hope to achieve?

The summit's mission is to build consensus on actions for improving public confidence and community participation in the justice system by:

- identifying justice partners and examining and clarifying their roles and responsibilities;
- establishing principles and values to guide all justice partners;
- identifying issues, challenges, needs, innovations and opportunities;
- determining ways to make the most effective and efficient use of justice system and community resources;
- identifying and establishing priorities for change and future direction;
- increasing Albertans' understanding of the justice system; and
- improving cooperation and communication among justice partners and the community.

How can Albertans have input into this process?

Albertans can have input into the summit in one of two ways.

1. Participating in public consultations

A public consultation is being conducted. Mr. Richard Magnus, MLA Calgary-North Hill, has been assigned specific responsibility for coordinating public input into the summit process. Mr. Magnus chairs an all-party public consultation committee. Other members of this consultation committee are Mr. Dave Coutts, MLA Livingstone-Macleod; Mr. LeRoy Johnson, MLA Wetaskiwin-Camrose; Ms. Sue Olsen, MLA Edmonton-Norwood; Ms. Mary O'Neill, MLA St. Albert; Mr. Raj Pannu, MLA Edmonton-Strathcona; and Ms. Janis Tarchuk, MLA Banff-Cochrane.

You can advise the consultation committee of your views by:

- attending consultation meetings as outlined in the schedule in Appendix A of this discussion guide, and/or

- providing your comments in writing to Mr. Richard Magnus, Chair, All-party MLA Summit on Justice Public Consultation Committee 2nd Floor, Bowker Building 9833 – 109 Street Edmonton, Alberta T5K 2E8 E-mail: justicesummit@gov.ab.ca

2. Participating in a justice sector consultation

The following justice sectors will also conduct their own respective consultations:

- Academic community
- Federal government
- First Nation Treaty areas 6, 7, and 8
- Legal Aid
- Legal community
- Metis Nation of Alberta
- Metis Settlements General Council
- Police community
- Provincial government
- Non-government organizations
- Victims' organizations

If you are a member of one of these justice sectors, you can provide input to the summit by contacting your respective sector representative, listed in Appendix B.

Questions to consider

The following information has been compiled to provide an overview of the justice system. Where statistics have been used, the most currently available information has been provided. These statistics have been obtained from either the Canadian Centre for Justice Statistics or the Alberta Department of Justice. As you read this information, please consider the following questions:

1. What are the issues facing Alberta's justice system?

2. What needs to be done to deal with those issues?

The following topics will be discussed at the Summit on Justice with a view to making a good justice system better.

Public confidence in the justice system

Recent public opinion polls indicate public dissatisfaction with some aspects of the justice system as well as satisfaction with others. Are there changes that need to be made to increase the level of public confidence in the justice system? What are the strengths of the current system and what can be done to ensure these strengths are protected?

Victims – their rights and their involvement in the system

The *Victims of Crime Act* outlines principles for the treatment of victims and their rights to information. It also provides a Financial Benefits Program for those who have suffered injury as a result of a crime, and a Grants Program for victims' services. Can victim involvement in the justice system be improved? If so, how?

Youth and the justice system

The *Young Offenders Act (Canada)* was proclaimed in 1984. The Act applies to youths aged 12 to 17, and significantly changed the way that society deals with young people. It provides the authority and principles that govern how young offender custody and community-based programs and services are delivered. Do you have any comments regarding youth and the justice system?

Policing An adequate and effective level of policing is required to provide for the safety and security of all Albertans. Are there any policing issues of concern to you or your community?

First Nation, Metis and Inuit justice The *Constitution Act* of 1982 defines Aboriginal people as including Indian, Metis and Inuit people. Indian people identify themselves as First Nation people. First Nation, Metis and Inuit justice issues have been the focus of many reports and commissions. How can the justice system work better for First Nation, Metis and Inuit peoples?

Barriers to accessing justice Is the justice system accessible to Albertans? If not, what is it that is preventing Albertans from accessing the system?

Alternatives to existing justice system processes Are there options to existing justice system processes which can and should be considered? What are the options and when should they be used?

Justice system overview

The Constitution

The Constitution establishes the various powers of government and divides them between the federal and provincial governments. The Constitution also establishes limits on the powers of government and establishes Canadians' fundamental rights and freedoms. The federal government is responsible for enacting and administering criminal law; enacting divorce law; and the appointment of superior court judges. The federal government is also responsible for Indians and lands reserved for Indians. The provincial government is responsible for the administration or management of criminal justice within the province; for the appointment of provincial court judges and justices of the peace; and for property and civil law within the province. Metis people have a unique relationship with the provincial government.

Alberta Minister of Justice and Attorney General

The Alberta Minister of Justice is also the Attorney General of the province. In a very broad sense, the Minister of Justice exercises administrative and ministerial functions while the Attorney General exercises legal functions.

Although by legislation or tradition the Alberta Minister of Justice exercises a lengthy list of powers, these powers are not unlimited and they are prescribed by law. While many people believe that the Minister of Justice exercises unlimited power and has unlimited right to intervene in whatever aspect of the administration of justice has caused them concern, this simply is not the case. For example, the Minister is not a police officer. While the Minister is instrumental in developing priorities for policing in the province and is responsible for en-

suring that an adequate and effective level of policing service is provided to all Albertans, the day-to-day internal management of policing services is the responsibility of the Commanding Officer of the RCMP in Alberta and the Chiefs of Police, respectively.

Also, while the Minister may be involved in the formulation of global policy in justice matters, he does not become involved in individual cases. In his capacity as Attorney General, he is required to exercise some functions under the *Criminal Code of Canada* such as where the consent of the Attorney General is required for prosecution. Neither the Minister of Justice nor any other Cabinet Minister may comment on cases before the court, so as to avoid even the suggestion of political interference in cases before the court.

Federal Minister of Justice and Attorney General

In Alberta, the federal Minister of Justice is responsible for criminal proceedings under federal laws other than the *Criminal Code of Canada*, and for civil proceedings under federal laws.

Federal Solicitor General

The federal Ministry of the Solicitor General is responsible within the Government of Canada for policing and law enforcement (including Aboriginal policing), national security, corrections and conditional releases.

The portfolio is comprised of the department and four agencies: the Royal Canadian Mounted Police (RCMP), the Canadian Security Intelligence Service (CSIS), the Correctional Service of Canada (CSC) and the National

Parole Board (NPB). There are also three review bodies: the RCMP External Review Committee, the RCMP Public Complaints Commission and the Office of the Correctional Investigator.

The department, ministry agencies and review bodies each contribute, specifically and collectively, to the protection of the public and to the maintenance of a just, peaceful and safe society.

Legal community

The legal profession in Alberta consists of approximately 6,500 lawyers who are employed by corporations, governments, non-profit organizations, or law reform, or are in private practice. Many lawyers are also elected representatives municipally, provincially or federally.

It is a basic democratic principle that lawyers are independent of governments. This is necessary because lawyers are often required to represent unpopular people and advocate unpopular positions.

Lawyers are bound by a Code of Ethics which forms the benchmark against which a lawyer's behaviour is judged.

A core value of the legal profession is the privilege which attaches to lawyer-client communications.

Prosecutors

The provincial Minister of Justice is given responsibility for proceedings under the *Criminal Code of Canada*, the *Young Offenders Act* (Canada) and *Provincial Statutes*. The federal Justice Minister is responsible for criminal proceedings under *Federal Statutes*, other than the *Criminal Code of Canada*, and for civil proceedings under federal laws. This division means that the majority of prosecutions in Alberta, as well as in the rest of the country, are handled by provincial prosecutors.

A Crown prosecutor is a lawyer who is authorized to represent the Crown (i.e. the state) before all courts in relation to the prosecution of offences.

The power to lay an information (i.e. a charge) is found in the *Criminal Code of Canada*. The police have no particular power to lay a charge, but rather the same power as any other individual. Most charges in Alberta are, however, laid by the police and few matters are laid by ordinary citizens. All matters are, however, reviewed by Crown prosecutors before they proceed.

It is common practice for the police to approach the Crown prosecutor for legal advice during the course of an investigation with respect to drafting a charge, obtaining wiretaps or search warrants, and other pre-charge issues. While police and other enforcement agencies investigate wrongdoing, it is ultimately the Crown prosecutor who decides what charges will be prosecuted in court and who subsequently conducts the prosecution. In deciding what charges will proceed, the Crown prosecutor must consider whether or not, based on the evidence, there is a likelihood of conviction, and whether or not prosecution is in the public interest.

Other responsibilities of the Crown prosecutor include dealing with defence counsel in terms of disclosure and issue resolution; interviewing victims and witnesses; general case preparation; and conducting arraignments, preliminary inquiries, trials and sentencing hearings.

The role of the prosecutor within the justice system is commented on in an often cited quote of Justice Rand of the Supreme Court of Canada:

"It cannot be overemphasized that the purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is presented: it should be

done firmly and pressed to its legitimate strength, but it must also be done fairly. The role of prosecutor eludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings. The achievement of these ends is our endeavour, these ideals our aspiration. To them we bring, imperfect as our own human frailty dictates, our intellects, skills and knowledge, an understanding of our fellow man, a compassion for the weakness of the wrongdoer, and a sympathy for his victim, a dignity, a courtesy, a fairness, respect for the law, and a fearless courage for what is right – but above all – integrity. This is our career.”

— *Boucher v. R.* [1955] S.C.R. 16 at 23

The prosecutor is not the lawyer for the police or for victims or complainants. The prosecutor is the representative of the “state” – an organization which includes the accused among its members.

Defence counsel

Persons who are arrested or detained have a constitutional right to counsel.

Defence counsel would most routinely appear after charges have been laid and make court appearances with the individual charged. The *Canadian Charter of Rights and Freedoms* allows any individual who is detained as part of an investigation to immediately contact counsel and seek legal advice from such counsel pre-charge.

The right to counsel protects the accuseds’ rights to remain silent and not to incriminate themselves, rights to be secure against unreasonable search and seizure, rights to make full answer and defence, and rights to a fair trial. The right to counsel is the means by which the innocent are protected from wrongful conviction.

Defence counsel ensure that full disclosure is provided by the Crown; that all evidence bearing on the accused’s case is disclosed or produced; that all legal issues bearing on the accused’s case are fully explored and properly adjudicated; that, in particular, all evidence tendered by the Crown was collected in accordance with constitutional standards; that all evidence supporting the accused’s case is tendered at trial; that Crown witnesses are cross-examined and weaknesses in the Crown case are explored; that an accused is convicted only when the Crown has satisfied its constitutional burden of proving guilt beyond a reasonable doubt, on the basis of all of the evidence; that, where an accused is convicted, the penalty is proportionate to the gravity of the offence and to the degree of culpability of the accused; that all options are explored for rehabilitation and reintegration of the accused, consistent with community safety; and that apparent errors made in trials are properly reviewed on appeal.

Defence counsel is professionally bound to advance all arguments ethically permitted on behalf of the accused, to ensure that the accused is convicted only if the government can properly establish guilt.

The Law Society of Alberta

The *Legal Profession Act* establishes the legal profession as a self-governing institution. The Law Society of Alberta:

- determines who can practice law in Alberta. In order to practice law, an individual must be a member of the Law Society of Alberta, which sets its own admission requirements. A person must have a law degree and complete a period of articles (i.e. a one year period during which the individual works under the supervision of a principal and is required to complete bar admission exams).

- is responsible for the discipline of lawyers. Complaints about lawyers must be directed to the Law Society, and not to government. The Law Society may then conduct an investigation, hold a disciplinary hearing, and impose a sanction. The ultimate sanction would be to disbar the lawyer, meaning the individual can no longer practice law in Alberta.
- is responsible for the administration of the legal profession. For example, although lawyers currently do not formally specialize in particular areas of the law, the Law Society is considering whether there should be formal specialist designations in criminal and family law.
- maintains a fund to compensate people who may suffer financially because of improper conduct by their lawyer. The Law Society also requires all lawyers who provide services to the public to have liability insurance.
- does **not** control fees charged by lawyers. It does, however, provide a mediation service for individuals who have a dispute with their lawyer. Individuals who are not satisfied with their lawyer's account can make application at the Court of Queen's Bench to have their account reviewed independently. This review is called "taxation." Taxation officers can, if circumstances warrant, reduce the amount of a lawyer's bill.

Legal Aid

"Legal aid" is the term used for legal assistance to persons who cannot afford to pay a lawyer from their own resources. In Alberta, legal aid is provided through the Legal Aid Society of Alberta. The Legal Aid Society (often referred to as simply "Legal Aid") is independent of government, and the government has no involvement in appointing counsel in individual cases. The Legal Aid Society does receive funding by way of an annual grant from the provincial government, through Alberta Justice.

The Legal Aid Society delivers both criminal (including young offender) and civil legal aid. Criminal legal aid is cost shared with the federal government, through the Department of Justice Canada. There is a relatively small federal contribution to civil legal aid included in a general block transfer of funds from the Department of Human Resources Canada. Other sources of funding are the Alberta Law Foundation (interest from lawyers' trust accounts) and client payment contributions (payments and partial payments).

Legal Aid makes assistance available free of charge to all persons who request it in most criminal courts of first appearance (i.e. docket court). The lawyers who provide this service are known as duty counsel, and may be either staff lawyers or lawyers in private practice who are being paid for the day. There is no eligibility testing for this service. It is available to anyone requesting it, although if the court is very busy, priority is given to persons in custody. The duty counsel service is a major legal aid program.

Individuals may also apply to have a lawyer appointed to represent them. To receive legal aid in this way, the applicant must be financially eligible and have the type of problem that the Legal Aid Society is allowed to cover. Persons who receive legal aid are required to repay unless it would cause severe hardship. Many people repay by means of small monthly payments. There is no interest charged.

A Board of Directors that deals with policy issues governs the Legal Aid Society, which in turn is responsible to the Law Society of Alberta and the Minister of Justice for Alberta. Board members are not paid for their service on the board.

There are 11 Legal Aid offices in the province. The provincial office is located in Edmonton, sharing space with the regional office. The province is divided into northern and southern districts, and within these, into 11 regions. The regional offices are located in Calgary, Edmonton, Fort McMurray, Grande Prairie, Lethbridge,

Medicine Hat, Peace River, Red Deer, St. Paul and Whitecourt. Staff from these offices travel on circuits to many surrounding communities.

For the most part, the legal aid system in Alberta is delivered by lawyers in private practice who bill Legal Aid instead of their clients. The Legal Aid tariff of fees is significantly lower than the fees that would generally be paid to a lawyer on a private retainer. In Edmonton and Calgary there are full-time staff lawyers who take cases in much the same manner as private bar lawyers.

Legal aid to young persons charged under the *Young Offenders Act* (Canada) is delivered in Edmonton and Calgary by staff lawyers who are paid a salary and who work directly for the Legal Aid Society. In other parts of the province, legal aid for youths is provided by the private bar.

The *Young Offenders Act* (Canada) provides that a young person who is not eligible for legal aid may ask that a lawyer be appointed for him by the Youth Court Judge, and that a lawyer so appointed be paid by the Attorney General for the Province. In Alberta, by agreement between the Law Society and Alberta Justice, the Attorney General's Court-ordered Counsel Program is administered by the Legal Aid Society.

Policing

There are three types of police services in Alberta – the RCMP Provincial Police Service; Municipal Police Services; and First Nation Police Services. Police services are responsible for protecting life and property; preventing and detecting crime; keeping the peace; and enforcing laws within their jurisdiction. They fulfil these duties through law enforcement and a variety of community services, including: crime prevention, education programs, assisting in locating missing persons, dealing with lost property, traffic control, victim assistance and accident investigation. In addition to the

uniformed members of the various police services, municipal police services and the RCMP also have resources dedicated specifically to serious crime, drug enforcement, intelligence gathering, organized crime, and forensic work. These dedicated resources support and enhance the level of service the police provide to the communities they serve.

Police do not always lay a charge when they have sufficient grounds. In some cases, where the offence is minor and the total circumstances warrant, the police may decide to exercise their discretion not to charge. That is not to say that no crime has been committed, but rather that the offence is of such a nature that it would be unreasonable to expend the resources of the justice system in pursuing prosecution. This discretion is a traditional part of our criminal law process.

In Alberta, municipal and First Nation police services and the RCMP have embraced the style of community-based policing. Community-based policing addresses community concerns by allowing community input into policing decisions. It puts police officers in a more “visible” role, as close to the community as possible.

Rural policing/RCMP provincial police service

Section 4 of the *Police Act* provides that counties, municipal districts and Metis settlements, and towns, villages and summer villages with populations not greater than 2,500, will receive policing from the Provincial Police Service at no direct cost.

Alberta contracts with Canada to provide the RCMP Provincial Police Service through the Provincial Police Service Agreement. This agreement was signed in April 1992 and is a 20 year agreement.

Alberta pays 70 per cent of the cost of the RCMP Provincial Police Service while Canada pays 30 per cent.

Alberta paid approximately \$78.3 million for the RCMP Provincial Police Service, for the 1997/98 fiscal year.

Municipal/urban policing

Section 4 of the *Police Act* requires that cities, towns, villages and summer villages with populations greater than 2,500 must provide their own policing.

These municipalities may opt to establish a municipal or regional police service, or contract with the province for policing services from the Provincial Police Service (this option is limited to municipalities with populations under 5,000). Municipalities with a population over 5,000 may contract with Canada for RCMP services.

Calgary, Camrose, Coaldale, Edmonton, Lacombe, Lethbridge, Medicine Hat and Taber have established municipal police services and police commissions. Municipalities with a municipal police service other than the RCMP pay 100 per cent of the costs.

There are 63 cities and towns and two specialized municipalities that have municipal policing agreements with Canada to provide RCMP municipal services. Two towns contract with the province for RCMP municipal services.

Municipalities that contract with Canada for RCMP services share the costs as follows:

- Municipalities with a population of less than 15,000 pay 70 per cent and Canada pays 30 per cent;
- Municipalities with a population greater than 15,000 pay 90 per cent and Canada pays 10 per cent.

The six towns of Athabasca, Fox Creek, Redwater, Rimbey, Swan Hills and Valleyview have populations under 2500 but have agreements with Canada to provide RCMP services. These municipalities chose to be “grandfathered” in when the population threshold in the *Police Act* changed from 1500 to 2500 in 1988.

First Nation policing

First Nations are policed by the RCMP Provincial Police Service unless another arrangement is made by the Alberta Minister of Justice and Attorney General, pursuant to Section 5 of the *Police Act*.

Alberta and Canada develop and fund First Nation police services through Tripartite Policing Agreements. In some cases, First Nations also contribute to funding for their police services.

Alberta is involved in First Nation policing because the province is responsible for general policing and policing standards.

The cost of First Nation policing under Tripartite Agreements is shared by Canada (52 per cent) and Alberta (48 per cent), subject to the availability of funds through the budgeting process to an agreed upon level of policing.

To date, 10 Tripartite Policing Agreements have been signed in Alberta which provide First Nation policing services to 19 First Nations.

There are an additional 46 Aboriginal RCMP members, not included in the RCMP Provincial Police Service, who may provide policing services in First Nation communities through a separate federal/provincial agreement.

Complaints

The *Police Act* outlines the complaint process for public complaints made against members of a municipal police service or the Chief of Police. Complaints against a police officer are made in writing to the Chief of Police. Appeals regarding the outcome of a complaint may be made to the Law Enforcement Review Board.

Complaints against a Chief of Police are made in writing to the Chairperson of a Police Commission. Similarly, appeals may be made to the Law Enforcement Review Board.

The *RCMP Act* outlines the complaint process for public complaints against members of the RCMP. Complaints against the RCMP can be made in one of three ways. A complaint can be made in person to any member or detachment of the RCMP, in writing to the Commanding Officer of the RCMP in Alberta, or to the RCMP Public Complaints Commission either in writing or in person. Appeals regarding the outcome of a complaint may be made to the RCMP Public Complaints Commission.

Tripartite Policing Agreements provide the complaint and appeal process for complaints against a First Nation police officer or a Chief of a First Nation Police Service. Complaints against a police officer are made in writing to the Chief of the First Nation Police Service. Appeals regarding the outcome of a complaint may be made to a specially constituted First Nation Review Board. Complaints against a Chief of Police are made in writing to the Chairperson of a First Nation Police Commission. Similarly, appeals may be made to the First Nation Review Board.

Funding

Alberta Justice is directly billed by the RCMP (Solicitor General Canada) for the cost of providing the Provincial Police Service (the costs are outlined under Rural Policing/RCMP Provincial Police Service on page 11). Alberta and Canada share the cost of First Nation Police Services, to an agreed upon level.

Alberta Justice does not directly fund municipalities that have established municipal police services or those that contract for RCMP services.

Policing statistics

In 1996, Canada had an average of 181 police officers per 100,000 population. In Alberta, there were 159 police officers per 100,000 population which was up slightly from 1995. Alberta has the third lowest number of police per 100,000 population in Canada.

In Alberta, expenditures on policing account for almost 63 per cent of provincial justice costs. Policing costs have remained stable over the last three years and represent a cost of \$166 per Albertan.

In 1996, Alberta's crime rate was the lowest among the western provinces, but was still 1.6 per cent higher than the national average.

The Courts

There are three branches of government – the legislative branch, the executive branch and the judiciary. The judiciary is an independent branch of government which presides over the courts. Judges interpret the law, determine facts and render decisions in a fair and impartial manner, thereby ensuring the rule of law – the cornerstone of a free and democratic society.

There are four courts in Alberta administered by the province: The Court of Appeal of Alberta; the Court of Queen's Bench of Alberta; the Surrogate Court of Alberta; and the Provincial Court of Alberta. There are also other courts which administer laws in Alberta, including the Federal Court of Canada, Trial and Appeal Divisions. There are also a number of boards and tribunals in Alberta, decisions of which may be appealed to the courts.

The Court of Appeal of Alberta

This is the highest appeal court in the province. The Chief Justice of Alberta and twelve other justices preside over this court. In addition, there are five supernumerary, or part-time justices. All

of these justices are appointed by the federal government. To be considered for appointment, an applicant or nominee must be a lawyer in good standing who has been in practice for at least 10 years and is a Canadian citizen.

Federally appointed advisory committees exist in each province and territory to recommend applicants to the federal Minister of Justice who in turn makes recommendations to cabinet.

This court sits in Edmonton and Calgary only.

The Court of Appeal can hear most civil and criminal appeals, and can also hear applications and appeals respecting certain judgments, orders, and decisions of the other courts.

The Court of Appeal generally sits with a quorum of three justices and may sit with one or more divisions of three justices. On the request of a justice of the Court of Appeal, a judge of the Court of Queen's Bench may sit or act in place of a judge who is absent, or as an additional judge.

Justices of the Court of Appeal are appointed to their position until they are age 75.

Complaints regarding a justice of the Court of Appeal are dealt with by the Canadian Judicial Council.

The Court of Queen's Bench of Alberta

The Court of Queen's Bench consists of the Chief Justice, the Associate Chief Justice, and 61 other justices who are federally appointed in the same manner as outlined above in relation to justices of the Court of Appeal. Additionally, there are 20 supernumerary justices.

The Court of Queen's Bench sits on a regular basis in 11 locations and sits on certain specified days in another two locations.

The Court of Queen's Bench is a superior court of civil and criminal jurisdiction. It holds jury

trials for both criminal and civil matters and it can hear civil trials for damages, regardless of the amount. It also handles matters such as divorces, adoptions, foreclosures, and bankruptcies.

Court of Queen's Bench justices are appointed to their position until they are age 75.

Complaints regarding a justice of the Court of Queen's Bench are dealt with by the Canadian Judicial Council.

The Surrogate Court of Alberta

The Chief Justice and other justices of the Court of Queen's Bench are the Chief Justice and justices respectively of the Surrogate Court.

This court sits in the same locations as the Court of Queen's Bench.

The Surrogate Court handles matters in relation to wills and estates, and with respect to *Dependent Adults Act* applications.

The Provincial Court of Alberta

There is a Chief Provincial Judge, eight assistant chief judges, 95 judges, and 12 supernumerary judges.

There are 23 locations throughout Alberta where the Provincial Court of Alberta sits permanently, and 51 locations where the court sits on certain specified days.

There are four divisions of the court: Criminal, Family, Youth, and Civil. The Criminal Division generally deals with criminal offences; the Family Division handles most *Child Welfare Act* matters and certain custody and maintenance disputes; the Youth Division hears matters under the *Young Offenders Act* (Canada); and the Civil Division handles civil claims where the amount claimed does not exceed \$7,500. All provincial court judges may hear any of the foregoing matters.

Judges of the Provincial Court of Alberta are appointed by the provincial government pursuant to the *Provincial Court Judges Act*. An applicant for appointment to the Provincial Court must be a lawyer in good standing who has been in practice for at least 10 years, and is a Canadian citizen. The applicant is interviewed by the Judicial Council. If the applicant is approved, the name is placed on a list of approved candidates. The Alberta Minister of Justice and Attorney General selects from this list of candidates. The final selection is done in consultation with the Chief Provincial Judge.

In Alberta, provincial court judges are currently appointed to their position until they are 70 years of age.

Complaints about a provincial court judge are dealt with by the Chief Judge who may determine that no further action need be taken, reprimand the judge, take corrective measures, or refer the matter to the Judicial Council.

The Judicial Council is composed of a justice of the Court of Appeal, a justice of the Court of Queen's Bench, a judge of the Provincial Court of Alberta, a Bencher of the Law Society, and two persons appointed by the Alberta Minister of Justice.

The Federal Court of Canada

The Federal Court of Canada handles matters relating to intellectual property; civil litigation involving First Nations, Metis and Inuit; federal Crown litigation; federal Crown judicial reviews; and maritime legislation.

Alternative measures

Alternative Measures Programs (adult and young offender) are used as an alternative to court proceedings for people alleged to have committed minor offences. The goals of these programs are to prevent the individual from obtaining a criminal record, prevent future criminal behaviour, promote community involvement and foster community awareness through participation. On average, 643 adults and 1,044 young offenders were supervised in the Alternative Measures Program each month in 1997/98.

Court decisions and sentencing

Individuals who have been charged with criminal offences may be held in custody until their trial or released on bail. A pre-trial release program operated by Alberta Justice supervises individuals released from custody on bail. In 1997/98, there was a monthly average of 1,151 offenders (adults and youths) under pre-trial supervision.

Once a finding of guilt has been determined, the actual sentence is decided by the judge.

Offenders who are sentenced to jail for less than two years or who receive community sentences such as fines or probation are under provincial jurisdiction. Offenders who receive prison sentences of two or more years are the responsibility of the federal government.

Some offenders may be sentenced to provincial "intermittent sentences" that are given along with probation orders and are normally served on weekends. Some intermittent sentences are served in Municipal Police Service and RCMP cells, if directed by the court.

Probation

Probation is a court sentence served in the community, usually under the supervision of a probation officer.

In fiscal year 1997/98, there was a monthly average of 7,886 adult probationers and 3,226 young offender probationers.

Conditional sentences

Conditional sentences were introduced in 1996. They are intended as an alternative to jail for low-risk offenders who are placed under supervision in the community by the court. Supervision of these offenders is provided by probation officers across the province. In 1997/98, there was an average of 741 conditionally sentenced offenders under supervision each month. Approximately 77 per cent of these offenders complete their conditional sentences without violation.

Community service

Community service is a non-monetary form of restitution where an offender is required to complete a designated number of hours of work for non-profit or charitable agencies in the community. Probation officers arrange appropriate work placements and supervise clients to ensure they complete their hours. In 1997/98, there was an average of 2,313 adult and young offenders under community service order supervision each month.

Fine option

The Fine Option Program allows offenders to participate in a community service project to work off all or part of their fine. Community Corrections staff supervise offenders in this program and coordinate placements. In 1997/98, there was an average of 1,275 adult and young offenders per month under fine option supervision.

Adult offenders

Alberta Justice operates nine remand and correctional centres and six minimum security camps for adults. Additionally, one correctional centre (Kainai Community Correctional Centre) and two minimum security camps are operated under contract by First Nation and Metis groups.

An average of 2,470 adult offenders were held in provincial custody per day in Alberta in 1996/97, down 3 per cent from the previous year. A total of 25,894 offenders were admitted to adult provincial correctional facilities during this period, 13.1 per cent of whom were female. Nationally, in 1996/97, the average number of adult offenders in provincial jail was up 1.5 per cent from the previous year and the number of offenders in federal penitentiaries decreased slightly from the previous year.

The typical offender serving a provincial jail sentence in Alberta is male, aged 32 years, convicted of a property crime, impaired driving, fraud or crimes against the administration of justice (e.g. failing to comply with a court order), and is serving an 80 day sentence.

Statistics

Statistics show that Canada has a very high rate of incarceration compared to other countries.

The most recent comparative statistics note that among the provinces in 1995/96, Alberta recorded the second highest incarceration rate of adult offenders in provincial custody at 127 per 100,000 people. Saskatchewan's incarceration rate was the highest at 172 per 100,000, while Nova Scotia's was the lowest at 57.

Young offenders

In 1984, the federal *Young Offenders Act* was proclaimed, replacing the *Juvenile Delinquents Act* (JDA). The JDA was a social welfare response to youth crime, dealing with neglected individuals as well as those committing criminal acts. Judges were given wide powers. In many ways the courts were placed in the role of kindly parent. Proceedings were held in private, within a system separate from the adult courts.

The *Young Offenders Act* (Canada) significantly changed the way that society deals with young people. The Act was intended to strike a balance between the rights and responsibilities of the young person and the rights of the community to be protected. The Act applies to youth aged 12 to 17.

The *Young Offenders Act* (Canada) provides the authority and principles that govern how custody and community-based programs and services are offered.

Dispositions available under the Act include:

- absolute discharge;
- conditional discharge;
- a fine of not more than \$1,000;
- compensation for loss or damage to property, loss of income or support, or for special damages for personal injury where the value is known;
- restitution, which is the return to the owner of the property obtained in the offence;
- compensation to the victim by way of personal service;
- community service to a maximum of 240 hours to be completed within 12 months;

- probation for a period of up to two years;
- open or secure custody for a period of two years with the following exception: in cases where a youth is found guilty of an offence for which an adult could be subject to life imprisonment, the youth may be held in custody for up to three years.

The Act also includes specific sentencing options for murder as follows:

- if convicted of first degree murder, a six-year period of custody followed by a four-year period of conditional release.
- if convicted of second degree murder, a four-year period of custody followed by a three-year period of conditional release.

The Act does provide that a young person may be transferred to adult court.

The Act provides that a young person over 16 years of age charged with murder, attempted murder, manslaughter or aggravated sexual assault shall be automatically transferred to adult court. However, there is a provision for the young person to appeal.

Young persons over 14 years of age who have been charged with a serious offence may also be transferred to adult court, upon application to the court. The decision to transfer is made by the judge after a hearing has been conducted.

The *Young Offenders Act* (Canada) does not allow a youth's name to be given to the public. An exception exists in the case of a judge's order with respect to a dangerous fugitive. A further exception exists in the case of a young offender who has been transferred to adult court.

Alberta Justice operates young offender centres located in Edmonton, Calgary, Lethbridge and Grande Prairie. Both the Red Deer and Medicine

Half adult remand centres also have separate young offender units. Alberta Justice also operates the Shunda Creek Youth Corrections Camp and contracts the operation of two additional camp programs, one of which is operated under contract by an Aboriginal group.

Non-institutional custody environments for young offenders in Alberta include privately operated group homes and private residences (the open-custody home program) operating under contract to Alberta Justice and accommodating young offenders serving open custody dispositions.

Alberta Hospital (Edmonton) and Poundmakers Society provide residential treatment programs.

Youth justice committees are located in over 60 communities. Some of these committees, which are composed of community volunteers, provide sentencing recommendations to the youth courts, while others are involved in assisting in the operation of young offender alternative measures programs.

An average of 550 young offenders were held in custody per day in Alberta during the 1996/97 fiscal year. This represents an incarceration rate of 22.3 per 10,000 youths. A total of 4,480 young offenders were admitted to provincial young offender custody programs during this period, 22 per cent of whom were female. Incarceration rates in the other provincial/territorial jurisdictions ranged from 13.3 per 10,000 youths in British Columbia to 94 per 10,000 youths in the Northwest Territories. The incarceration rates for the other prairie provinces were 33 per 10,000 youths in Manitoba and 37.5 per 10,000 youths in Saskatchewan.

The typical young offender in custody is male, between 15° and 16° years of age, is incarcerated for property offences, and has an average sentence length of 110 days.

The Legal Aid youth offices in Edmonton and Calgary are responsible for a number of creative placement initiatives for youths in conflict with the law both on pre-trial release and post-conviction. These placement initiatives include assistance in finding supportive accommodations and programming to address the young person's needs.

Release programs

Temporary absence

The Temporary Absence Program permits carefully selected minimum security offenders to be issued a conditional early release from provincial correctional centres. Community privileges are issued for employment, education, treatment or humanitarian purposes.

In 1997/98, there was an average of 360 offenders on temporary absence each day. Less than .5 per cent of all the offenders granted temporary absence permits during this period were convicted of criminal offences during the course of their supervision.

Parole

Parole is form of conditional release which allows some offenders to serve the balance of their sentences outside of jail. Parole boards are administrative tribunals which have the authority to grant, deny, terminate or revoke parole in their jurisdiction. The federal National Parole Board has jurisdiction to grant parole for all offenders sentenced to a federal penitentiary and offenders held in Alberta provincial jails.

Surveillance supervision program and attendance centres

The Surveillance Supervision Program is an intensive conditional release program for low-risk minimum security offenders sentenced to provincial jail. These offenders, after serving a period of imprisonment, may apply for temporary absence release, and if appropriate, are granted a temporary absence to the Surveillance Supervision Program. Unemployed offenders are required to report to an Attendance Centre seven days a week to participate in programs or do community service work. They must remain in their residences under curfew from 6 p.m. until 6 a.m., supervised by Alberta Justice correctional officers. Those offenders with employment are bound by the curfew and are required to return daily to an Attendance Centre if their employment terminates.

Attendance Centres in Edmonton and Calgary also provide programming and supervise community service work placements for offenders in the Fine Option Program or those who are on probation with a community service requirement. Attendance Centre staff also enforce the curfews of conditionally sentenced offenders.

House arrest program

House arrest is an intensive, highly structured community based program for intermittent-(weekend) sentenced offenders. Offenders selected to participate in the program are required to report daily during their days of sentence to the Attendance Centre in Edmonton or Calgary to either participate in required programs or do community service work. When not required at the Attendance Centre, these offenders are subject to house arrest in their own residences, monitored by Attendance Centre correctional officers. There is zero tolerance for offender violations of the House Arrest Program. Since November 1997, there has been an average of 115 offenders on house arrest in Alberta each weekend.

Civil matters

Civil and family law

Through the Civil Law Division of the Alberta Justice department, the Attorney General provides legal advice and assistance to the other government departments.

The Alberta Attorney General and the Department of Justice do not provide legal advice or assistance to anyone who is not associated with the government.

Unless the government is a party to an action – for example if someone is suing the government – the Department of Justice is not involved in civil cases. Civil litigation involving private individuals does not involve the government, and neither the Attorney General nor the Department of Justice can intervene or become involved in a private case.

The government does become involved in maintenance enforcement because the *Maintenance Enforcement Act* provides that maintenance must be paid through the Director of Maintenance Enforcement unless a creditor opts out of the program. The Maintenance Enforcement Program provides for the enforcement of court-ordered child maintenance payments.

The government also becomes involved in actions and court proceedings for the protection of children, by the authority of the *Child Welfare Act*. In the case of child welfare proceedings, the responsible Minister is the Minister of Family and Social Services. Proceedings take place in Provincial Court.

Acting under the authority of the *Public Trustee Act*, the *Dependent Adults Act*, and the *Administration of Estates Act*, the Public Trustee protects and administers the property of dependent adults, minor children and deceased persons where there is no one else able to act.

The Alberta Minister of Justice is responsible for some provincial family law legislation. This includes the *Domestic Relations Act*, *Extra-Provincial Enforcement of Custody Orders Act*, *International Child Abduction Act*, *Maintenance Enforcement Act*, and the *Provincial Court Act*. The *Divorce Act* is federal legislation.

A Parenting After Separation Program, which was jointly developed by Alberta Family and Social Services, the Court of Queen's Bench and Alberta Justice is delivered in all judicial districts in the province. The objective of the program is to provide information about: childrens' reactions to their parents' separation; the legal, emotional and financial implications of separation; and using mediation to resolve disputes. The program also provides participants with an opportunity to discuss options for custody and access, develop a parenting plan and learn how to maintain their relationship with their children after separation.

Alberta Justice provides information to the public about the Child Support Guidelines (federal legislation) through public information offices located in the courthouses in Edmonton and Calgary.

The *Protection Against Family Violence Act* was passed during the 1998 spring session of the Alberta Legislature, although it has yet to be proclaimed. The objectives of the Act are: to reinforce the message that family violence is of serious concern to society and the justice system; to assist victims of family violence by providing more expeditious and cost-effective access to emergency protection orders; and to assist victims of family violence by providing them with additional remedies for protection.

The rules by which Alberta's courts run are made by the justices of the Court of Appeal and Court of Queen's Bench. Those rules are often reviewed and revised in an effort to react to developing practice and to streamline the court's processes. The courts are in the midst of a number of initiatives which are designed to speed up the examination for discovery process and the whole trial process.

The rules of court include the fees that must be paid to begin or take steps in a court action. For example, in civil actions there is a filing fee of \$200 to file a Statement of Claim or other originating document in the Court of Queen's Bench. By agreement between Alberta Justice and the Legal Aid Society, the filing fee can be waived in legal aid cases. The Alberta Minister of Justice also provides that in cases where the only relief sought from the court is a restraining order, the filing fee will be waived.

Most civil litigation cases are settled before trial. Many litigants are opting for alternative dispute resolution mechanisms such as mediation to avoid the pitfalls of trial.

If a trial occurs, generally the winning side is awarded costs against the losing side. These costs are designed to reflect the fact that it costs the litigants to litigate. However, the *Alberta Rules of Court* do not provide for full cost indemnity.

First Nation and Metis people

The *Constitution Act* of 1982 defines Aboriginal people as including Indian, Metis and Inuit people. Indian people identify themselves as First Nation people. It is acknowledged that First Nation people have a special relationship with the federal government by virtue of the Treaties. Metis people have a different basis for their relationship with the federal government and consequently, with the provincial government. It is recognized that these relationships are in a continual process of evolution and definition, often involving landmark decisions and rulings through the courts.

Justice for First Nation and Metis people is a concept that embodies aspects other than just the criminal justice system and the involvement of Aboriginal people in that system. Such aspects

include, for example, First Nation people seeking, through the courts, resolution of issues arising from Treaty rights, land claims and environmental concerns.

First Nation and Metis people are also pursuing the establishment of their own justice systems, in the broadest sense, and other social systems that will respect their traditions, rights and cultural uniqueness.

The 1991 *Justice on Trial "Report of the Task Force on the Criminal Justice System and Its Impact on the Indian and Metis People of Alberta"* noted that, "... the impact of the criminal justice system on Aboriginal people can be measured by the disproportionate number of people in our correctional institutions. Aboriginal people are often on the receiving end of what appears to be a foreign system of justice delivered, in large measure, by non-Aboriginals."

The failure of the justice system to meet the needs of Aboriginal peoples has been identified by various studies across Canada, most recently by the *Report of the Royal Commission on Aboriginal Peoples*. Aboriginal issues have placed, and continue to place, unique demands on the Canadian justice system.

Although Aboriginal over-representation in all aspects of the criminal justice system remains at a high level (for example in 1997/98, 36 per cent of adult-sentenced admissions to Alberta provincial correctional centres were Aboriginal people and 53 per cent of all adult women admitted to custody were of Aboriginal descent), new directions are slowly evolving in how to deal with such issues. In Alberta, these new directions involve increased communication and partnership between the Aboriginal community and Alberta Justice to promote the development, control and delivery of justice programs for Aboriginal people by the Aboriginal community itself.

In the area of community corrections, Alberta Justice has entered into four agreements covering 11 First Nations as follows:

- Kainai Community Corrections Society (1990) – one First Nation
- Yellowhead Tribal Community Corrections Society (1991) – five First Nations
- Tsuu T'ina / Stoney Corrections Society (1992) - four First Nations
- Siksika Justice Commission (1994) – one First Nation

Such agreements involve the provision of a range of programs by the First Nations including: crime prevention, probation, courtworker and Elder programs and the running of one 29-bed, minimum security, community correctional centre on the Blood Reserve. Community corrections' agreements are also under negotiation with five other First Nations and preliminary discussions have been held with a further Tribal (Regional) Council, the Metis Nation of Alberta Association (MNAA) and the Metis Settlements General Council.

Other community-based Aboriginal corrections' initiatives include:

- the Metis Nation of Alberta Wilderness Camp minimum security facility for adult Aboriginal offenders operated by the Metis Nation of Alberta Zones 1, 2, 5 and 6;
- the Westcastle minimum security camp for Aboriginal offenders operated by Native Counselling Services of Alberta; and,
- the Kapashkwatinak young offender camp for male young offenders serving the Treaty 8 area.

Alberta Justice is also discussing the transfer of the Footner Lake Correctional Camp in High Level to the Dene Tha' First Nation.

Institutional Aboriginal programs include:

- the correctional centres' Elder program (under which Elders visit both adult and young offender facilities to provide spiritual guidance and counselling. They also conduct and provide instruction in ceremonies such as sweat lodges and pipe ceremonies); and,
- Native Program coordinators who provide Aboriginal programming in adult correctional centres and young offender centres.

Other correctional Aboriginal justice programs include: Assistant Probation Officer Program; Native Criminal Courtworker Program; Native Family Courtworker Program; Elder/Youth Summer Camps; and Aboriginal Youth Justice Committees.

In the area of policing, Alberta Justice has signed a total of 10 policing tripartite agreements with Canada and First Nations under which 19 First Nations are providing policing services to their communities. Aboriginal communities also use the Aboriginal Special Constable Program to hire special constables to enforce band bylaws, selected provincial statutes and sections of the *Indian Act*.

The RCMP has established on-reserve, Aboriginal policing detachments in four communities and on-reserve satellite offices in a further eight communities.

Alberta Justice funds crime prevention programs serving First Nation communities.

The province recently (January 8, 1998) transferred the provincial court from Gleichen to the Siksika Nation Courthouse on the Siksika First Nation and is actively reviewing requests from First Nations to develop court models to better suit the needs of those First Nation communities.

Victims

Victims of Crime Act

The Alberta Government recently proclaimed the *Victims of Crime Act*. The Act amalgamates the *Criminal Injuries Compensation and Victims Programs Assistance Acts*, streamlines services to victims and establishes the authority to collect surcharges on provincial statute offences. The Act also outlines principles respecting the treatment of victims and provides victims with rights to obtain information. Under the Act, federal fine surcharges already collected and surcharge revenue collected under the new Act are deposited into a fund which is used to support two primary programs, the Financial Benefits Program and a grants program.

- **Financial Benefits Program**

In Alberta, victims who have suffered physical or emotional injury or loss as a result of a criminal offence can apply for financial benefits. Those injured during a crime may be eligible for a one-time financial benefit based on the severity of injuries sustained. Payment is determined by the severity of the injury and is made regardless of the claimant's financial position or sources of income.

- **Grants Program**

Groups and organizations that provide services to victims during the criminal justice process are eligible to apply for a Victims of Crime Program grant. A committee representing government, police and the community evaluates applications for funding twice yearly and makes recommendations for the most desirable allocation of monies.

Since proclamation of the *Victims Programs Assistance Act* in 1991 and the *Victims of Crime Act* in 1997, victim assistance programs have expanded throughout the province. With the support of local communities, police services and

Alberta Justice, over 80 police-based victim services units have been established to provide information, assistance and courtroom support to victims during the criminal justice process.

As well as grants for police-affiliated programs, funding has also been approved for programs that help prepare victims for court, assist victims of sexual assault and domestic violence and assist child victims and victims who live with disabilities.

Non-government organizations

Non-government organizations, also known as community agencies or non-profits, provide a variety of services and activities in the community and at various stages of the justice system. They are governed by voluntary boards of directors and make extensive use of volunteers to deliver programs. Some may also engage in public education activities or speak out on social policy issues that relate to developing safe communities.

Some non-government organizations provide services and programs to people directly involved in the criminal justice system, such as victims, witnesses or offenders. These services might include counselling and information for victims, victim offender mediation programs, assistance with obtaining pardons, or supervision of offenders on release.

Other agencies provide services or support to parents, extended families, children, or spouses involved in family law or divorce courts.

There are also some service providers that may have interest in or occasional contact with the justice system, such as educators, mental health professionals, social workers, child welfare workers and others.

Appendix A

Schedule of events

January 1998 **Summit announced**
 May – September **Consultations**

Date	Location	Facility	Time
May 20	Stand Off	Gladstone Hall, Blood Reserve	9 - 11 am
May 20	Lethbridge	Turcotte Hall, Univ. of Lethbridge	2 - 5 pm, 7 - 9 pm
May 21	Medicine Hat	Heritage Room, Callaghan Inn	1 - 5 pm, 7 - 9 pm
May 26	Lloydminster	Canadian Room, Wayside Inn	5 - 9 pm
May 27	St. Paul	Elks Lodge	1 - 5 pm
May 28	Red Deer	Palermo Room, Capri Hotel and Convention Centre	1 - 5 pm 7 - 9 pm
June 8	Fort McMurray	Oak Room, Sawridge Hotel	1 - 5 pm
June 9	Slave Lake	Small Pipe Room, Sawridge Hotel	10 am - 12 noon 1 - 3 pm
June 9	High Prairie	Riel Room, High Prairie Inn	7 - 9 pm
June 22	Grande Prairie	Cedar II, Grande Prairie Inn	1 - 5 pm, 7 - 9 pm
June 23	Peace River	Conference Room, Catholic Conference Centre	1 - 5 pm
June 24	High Level	High Level Sports Complex	9 am - 12 noon
Sept. 14	Hobbema	Jim Omeasoo Cultural Centre	10 am - 12 noon
Sept. 14	Wetaskiwin	Memorial Arts Centre	2 - 5 pm
Sept. 15, 16	Edmonton	Courtyard B, Edmonton Inn	9 am - 12 noon 1 - 5 pm, 7 - 9 pm
Sept. 21	Calgary	Columbian Room, Holiday Inn Downtown	9 pm - 12 noon 1 - 5 pm, 7 - 9 pm
Sept. 22	Siksika First Nation	Community Centre, Siksika Nation	9 - 11 am
Sept. 22	Calgary	Columbian Room, Holiday Inn Downtown	2 - 5 pm, 7 - 9 pm

October – December **Pre-summit planning**
 January 1999 **Summit, Calgary**
 March 1999 **Recommendations to government**
 April 1999 **Approved recommendations put into government business plans**

To register call: 427-8530 (for toll free assistance call 310-0000).

Appendix B

Members of the Summit on Justice working committee

Sector	Sector Representative	
Academic Community	Professor Wayne Renke	403-492-9809
Alberta Public	Mr. LeRoy Johnson, MLA Wetaskiwin-Camrose	403-415-0977
Confederacy of Treaty 6 First Nations of Alberta	Mr. Rupert Arcand	403-483-9404
Federal Government	Mr. William Blain	403-495-7101
Legal Aid Society of Alberta	Ms. Nancy Brown Medwid	403-427-7575
Legal Community	Mr. Peter Freeman, Q.C.	403-229-4700
	Mr. James Robb, Q.C.	403-422-8383
	Mr. Tim Christian, Q.C.	403-492-2552
Metis Nation of Alberta Association and Metis Settlements General Council	Ms. Trish Kumpf	403-477-6648
	Mr. Harold Robinson	403-427-1122
Municipal Police Services	Staff Sergeant Dean Albrecht	403-421-3476
Non-Government Organizations	Ms. Christine Leonard	403-423-4878
Provincial Government	Mr. Bruce Anderson	403-422-5487
RCMP	Staff Sergeant Tim Vatamaniuck	403-412-5315
Treaty 8 First Nations of Alberta	Mr. Jaret Cardinal	403-444-9366
Treaty 7 Tribal Council	Mr. Ron Many Heads	403-734-5129
Victims' Organizations	Ms. Colette Mandin-Kossowan	403-464-9935

Judicial Advisor to the Working Committee

Honourable E.J.M. Walter, Assistant Chief Judge, Provincial Court of Alberta