



REPRESENTATIVE FOR
CHILDREN AND YOUTH

Special Report

The Impact of
Criminal Justice
Funding Decisions
on Children in B.C.

March 2012

March 28, 2012

The Honourable Bill Barisoff
Speaker of the Legislative Assembly
Suite 207, Parliament Buildings
Victoria, BC V8V 1X4

Dear Mr. Speaker,

I have the honour of submitting this report, *The Impact of Criminal Justice Funding Decisions on Children in B.C.*, to the Legislative Assembly of British Columbia. This report is prepared in accordance with Section 20 of the *Representative for Children and Youth Act*, which states that the Representative may make a special report to the Legislative Assembly if she considers it necessary to do so.

Sincerely,

A handwritten signature in black ink, reading "mecturpel-lafond". The signature is written in a cursive, lowercase style.

Mary Ellen Turpel-Lafond
Representative for Children and Youth

pc: Mr. Craig James, QC
Clerk of the Legislative Assembly

Ms. Joan McIntyre
Chair, Select Standing Committee on Children and Youth

1 Introduction

The Representative determined that this Special Report¹ was necessary after learning that a serious child abuse prosecution was stayed (terminated) by the provincial court in January 2010 under the *Canadian Charter of Rights and Freedoms*. The prosecution was stayed on the basis that there had been an unreasonable delay and breaches of the *Charter* rights of the accused following the failure by the prosecution to transcribe and provide the defence with witness statements.² The Crown did not appeal the court's judgment. The judgment ended with this statement:

I have to add, though, that these are serious offences with real complainants. I have to add that it is very disturbing that the value of the complainants' sexual, physical and emotional integrity is less than the cost of translation and transcription. (The father) has been publicly charged with very serious offences and he now has no ability to clear his name. The investigator has put in time and effort and will see no resolution for the work that he has done. Regardless of what happens today in this courtroom, there is a tragedy.

The charges included allegations of physical and sexual assaults on a girl whose family had recently come to Canada. Thirteen charges were laid following a police investigation that began when the girl disclosed to her school counsellor that she had been sexually assaulted by her father, and physically assaulted by her brother at the direction of her father. The girl also said that her father had repeatedly assaulted her mother. The accused was not identified due to a publication ban.

Although there was a quick response by police in conducting the initial investigation and seeking a warrant for the father's arrest, both the victims and the accused provided statements in languages other than English. The statements, vital evidence that the accused and his lawyer were entitled to view, were not transcribed into English for almost two years. The failure to provide these translations resulted in the judge ordering a stay of proceedings because of a breach of the constitutional rights of the accused to a fair trial and to be tried within a reasonable time.

1 Section 20 of the *Representative for Children and Youth Act (RCYA)* states that: "the Representative for Children and Youth may make a special report to the Legislative Assembly if the Representative considers it necessary to do so."

2 The court judgment can be found on the B.C. provincial court's website. See Sources and References, Jurisprudence.

The issue of access to justice services for immigrant children and families is of great concern to the Representative because of British Columbia's increasing ethnic and linguistic diversity. The events that are the subject of this report are symptomatic of the challenges to the justice system in British Columbia by immigration and changing demographics, particularly in relation to safeguarding children.

In 2006, 27.5 per cent of the population of B.C. was foreign born, an increase from the 22.3 per cent recorded in 1996.³ Much of this increase was concentrated in the Lower Mainland. More than half of the foreign-born persons living in B.C. in 2006 came from Asia or the Middle East. These trends are also reflected in the languages people speak at home. In 2006, nearly half of this province's foreign-born population spoke neither English nor French most often at home.

These well-documented changes in the population mean that service providers, including police and Crown Counsel, have to take concrete steps to ensure accessibility and remove barriers, including language barriers, that impact the safe-guarding of children.⁴

As previously noted, Section 20 of the Act allows the Representative to make a Special Report if she considers it necessary to do so. The circumstances highlighted in this report demonstrate that clear direction and concerted action by the prosecutorial service are required to ensure that prosecutions run their full course and that all parties, including alleged victims, receive timely judicial attention.

Judicial Stay of Proceedings

A judicial stay of proceedings is a stopping or arresting of a judicial proceeding by the direction or order of a court. The effect of a stay of proceedings in a criminal trial is the termination of the prosecution.

This report is not a criticism of the judge's decision to enter a stay of proceedings, and should not be interpreted in that way. It was stated in the reasons for the decision that such a stay was based on clear jurisprudence from the Supreme Court of Canada, well known to police, prosecutors and others in the criminal justice system. Nor should the comments in this report be taken

as presupposing a position on the guilt or innocence of the accused, as it would be inappropriate for the Representative to speculate on the outcome of a criminal trial that never occurred. The judge's decision was not appealed.

³ B.C. Stats, Census 2006 *Fast Facts, Immigrant Population of British Columbia*, February 2008.

⁴ The Criminal Justice Branch has recently translated its policy on Spousal Violence into Simplified Chinese, Chinese, French, Korean and Punjabi. The preface and introduction to the Crown Counsel policy manual have also been translated into these languages.

The Family's History

The family immigrated to Canada in 2005. They were admitted as refugees. The mother and father had six children, and a seventh was born after their arrival in this country. They settled in the Lower Mainland. The father was unable to work. When funding from the federal refugee assistance program ended in the year after their arrival, the family applied for and received income assistance.

In the fall of 2006, the father told staff at his oldest daughter's high school that he wanted to remove her from school, so she could remain at home and help her mother, who was pregnant. The school advised him that this wasn't possible and contacted an immigrant settlement worker to assist the family. A few weeks later, the oldest daughter stopped going to school. She gave the school a six-page statement explaining that she was being bullied by a group of other students. Despite the efforts of school staff and the school's police liaison officer, the daughter did not return to school until March 2007.

In December 2006, the girl and her father went to a local hospital emergency room, where she was found to have multiple bruises to her knees, upper body and face. The father and daughter told police she had been attacked by the same group of youths who had been bullying her at school.

A week after they reported this alleged attack to police, a physician privately interviewed the daughter. The physician was concerned about previous statements made by her father regarding the importance of his daughter maintaining her virginity, and how he had taken steps to have her "checked out for this." The daughter told the doctor her father had never examined her, but that she had seen several physicians for the purpose of reassuring her father that she was a virgin.

In January 2007, a public health nurse contacted the Ministry of Children and Family Development (MCFD) to request support services for the family. Her concerns were related to the challenges faced by this family in settling in Canada, navigating services, family stress and financial hardship. A support worker who spoke the family's language was brought in to assist them.

In early 2007, there were numerous case conference meetings with school staff, contracted service providers, social workers, child and youth mental health workers, public health nurses and youth workers, all focused on supporting the family and resolving the alleged bullying issue so the daughter could return to school. The service providers remained concerned about the oldest daughter's mental health, but the father and daughter were adamant that she had no mental health issues and declined follow-up services.

In July 2007, the father told the income assistance worker at the Ministry of Housing and Social Development (now the Ministry of Social Development) that he was returning to his country of origin because of concerns about his mother's health. He told the worker that a friend had given him the money to pay for his flight.

While he was away, he remained in regular contact with his family, sometimes calling on a daily basis. In January 2008, when the father's return to Canada was imminent, the daughter disclosed to her school counsellor that she had been physically and sexually assaulted by her father and physically abused by her brother. The counsellor contacted MCFD and police. Police immediately began an investigation.

When interviewed by police, the daughter described incidents of physical and sexual abuse that had begun in the fall of 2006, stopping only after the father left the country in the summer of 2007. She told the police that her father forced her to say that she was being bullied and physically assaulted by a gang of youths in order to cover up his own controlling and assaultive behaviour.

The daughter told police that her father had repeatedly sexually assaulted her during an eight-month period, including forcing her to engage in anal intercourse, and obsessively checking the status of her virginity. She also told police her father had often told her that the sexual abuse was her fault, and that he had to be sure she wasn't doing anything "bad" with anyone else.

The daughter said that in addition to sexual abuse, there was frequent physical abuse, often fuelled by the father's bouts of heavy drinking. She alleged that the father had also forced his son to participate in the physical assaults on her, telling him that if his punches didn't draw blood from his sister then the son himself would be beaten.

The daughter gave police a series of photographs her father had taken of her injuries after the fabricated assault by the gang of youths in 2006. She also gave them three letters from walk-in medical clinics attesting to her virginity – documents obtained at her father's insistence.⁵

⁵ The Representative will discuss with the BC College of Physicians and Surgeons a possible review of its policies to address unnecessary female genital examinations and communicate to physicians their responsibility to ensure the well-being of children and youth.

Police interviewed the mother, who described a marital relationship rife with physical abuse and threats of violence. The mother told police that the family tried to hide all the cooking knives in the apartment because the father had frequently threatened to stab her or the oldest daughter. She told police her husband had warned her that if she went to police or tried to leave him while he was away, he would kill her and the members of her family who remained in their home country.

The mother told police the daughter's allegations of sexual assault were true, saying she had witnessed them on several occasions. She described how she was beaten and then stabbed in the upper arm by her husband in her ninth month of pregnancy when she tried to stop the continuing sexual assaults on her daughter.

The mother also said that her husband had repeatedly threatened to mutilate the second-oldest daughter and told her that once he was finished with the oldest daughter, he would "start with" the next daughter. The mother told police that the second-oldest daughter had already witnessed at least one sexual assault on her older sister, although she didn't think the second daughter had yet been directly victimized.

Because the mother's spoken English was limited, a police officer who spoke her native language conducted that interview and relayed the results to the primary investigator.

Criminal Charges Laid

Within a week of the daughter's initial disclosure in January 2008, police had prepared a Report to Crown Counsel, recommending charges.

Crown promptly approved 13 charges in January 2008:

- five counts of assault
- three counts of uttering threats
- one count of assault with a weapon
- one count of touching a young person for a sexual purpose
- one count of sexual assault
- one count of incest, and
- one count of public mischief (reporting an event to police that had not occurred).⁶

Police also worked with Crown Counsel to obtain a Canada-wide warrant for the father's arrest before he returned. Police were waiting for him when his plane landed in Toronto on his way home to the Lower Mainland in January 2008.

⁶ The charges were laid by way of two criminal informations – the first information was sworn on Jan.15, 2008 and the second information, adding three counts, was sworn Jan. 24, 2008.

Canada-wide Warrant

A Canada-wide warrant allows for the arrest of an accused person anywhere in the country. Most warrants issued for wanted persons are restricted to the province where the offence occurred, or even a metropolitan area. If police in Vancouver, for example, check an individual on the street who has a warrant for his arrest in Alberta only, they have no power to detain that person. Warrants of this nature are often referred to as “non-returnables,” meaning they do not empower police to arrest the individual and return him or her to the jurisdiction that issued the warrant. Canada-wide warrants are usually only issued in the most serious cases.

On Feb. 7, 2008, the accused was ordered released on bail with numerous conditions, including the requirement that he make a deposit of \$5,000 cash or else post a surety in the amount of \$7,500. Because of his apparent lack of means, it was not expected that he would be able to meet the terms of release and would remain in custody until trial. An initial trial date, based on the assumption he would remain in custody, was set for June 2008.

Trial Dates

When dates are set for the trial of a criminal matter, priority is generally given to accused persons who are held in custody so that they are not detained any longer than necessary. Accused persons who are released on bail can expect longer waits before their trial date.

However, a friend put up the deposit of \$5,000 cash in March 2008, and the father was released from custody. The father's lawyer offered to postpone the trial date to allow other in-custody matters to be heard first, but Crown Counsel did not agree.

The criminal trial remained set for June 2-5, 2008.

Audio recordings of the police statements given by the family members (in two different non-English languages, one of which is rare in Canada) had been made, but they still had to be translated by a court-approved translator and then transcribed into written form. In May 2008, police were specifically told by the Crown that witness statements had to be translated by “certified court interpreters.”

In B.C., police are responsible for arranging the translation and transcription of statements made in foreign languages and providing those translated statements to

Crown Counsel. This responsibility is spelled out in the Memorandum of Understanding on Disclosure between Police and Crown Counsel in British Columbia,⁷ which states:

"If a witness statement is audio and/or video recorded and forms part of Police Disclosure, Police must have the recording accurately transcribed in English and provide (Criminal Justice Branch) with a copy or copies of the transcript...."

Translation and Interpretation

Although these terms are sometimes used interchangeably, interpretation is concerned with the spoken word, while translation is applied to written documents.

Immediately after the father's arrest in January 2008, the mother and her children moved into a transition house. In February 2008, they moved to a transition house in a different community. When the father was released on bail in March 2008, his release conditions included a prohibition on any contact with his wife or children.

In the wake of the daughter's disclosures, the family was referred to the Suspected Child Abuse and Neglect (SCAN) Team in their region. This team is one of five SCAN teams in B.C. It provides physical examinations, psychological assessments, recommendations for appropriate longer-term treatment programs in the community and consultation to professionals (health care, child protection and police) regarding child maltreatment issues.

In this case, the SCAN team worked with the mother and children over a three-month period, with a focus on identifying any signs of physical and sexual abuse, and to support all the children in the family in coming to terms with what had occurred. During this period, the SCAN team completed comprehensive physical examinations and assessments of the children's mental and emotional health. The children were all assessed as having post traumatic stress disorder and were referred for ongoing treatment and support.

Adjournments

On May 9, 2008, a pre-trial conference was held for the trial scheduled to begin on June 2. At that conference, Crown Counsel asked for an adjournment because they had not yet received the translations of two videotaped interviews of the complainants conducted by police. Defence counsel had no objection to this delay and it was agreed that the Crown should have those statements prior to interviewing the complainant.

⁷ Memorandum of Understanding on Disclosure between Police and Crown Counsel in British Columbia, 2005. Crown Counsel advised that this Memorandum of Understanding was renewed in 2011.

On May 12, 2008 a trial date was set for four days, scheduled to begin March 2, 2009, almost 10 months away. Because the accused had been released on bail in March 2008, there was less urgency attached to bringing the matter to trial than if he had remained in custody.

On Sept. 23, 2008, this second date was adjourned one further month, to April 6, 2009, at the request of the defence. The parties agreed to use the March 2, 2009 date for a second pre-trial conference.

In accordance with the Crown's May 2008 advice, the primary police investigator had been actively seeking professional services to translate the statements made to police by the family and the accused. The preliminary cost estimate provided to the investigator by a recognized translation company was about \$40,000. The investigator, who did not have the power to authorize such an expenditure, sought approval from senior police managers to proceed. He did not receive approval.

The Representative has learned that the investigating police officer, unable to obtain authorization for the money needed to translate and transcribe the statements, sought to reduce the cost by having a translator review the statements and then record his translation, in English, which could then be transcribed by police clerical staff. This was a slow process that could not be completed in time for trial.

When the parties appeared before the court for their second pre-trial conference on March 6, 2009 (a slight delay from the original agreed-upon date), Crown Counsel sought a second adjournment for the same reason they had sought the first adjournment – the videotaped interviews had still not been translated.

Although the father's lawyer objected to this further delay, the court agreed to a fourth trial date – for Jan. 13, 2010. The court at that time stated that the date was to be set "*peremptory on the Crown*," which means that the date would be final unless there were very special circumstances, and the Crown was risking a judicial stay of proceedings if it was not prepared to proceed on that date.

Had this January 2010 trial proceeded, it would have been two years after the father's initial arrest at the Toronto airport. However, at a trial confirmation hearing held on Dec. 4, 2009, just one month before the January 2010 trial was to begin, Crown sought a third adjournment, in part because the translation of the statements was still not completed. Additionally, Crown told the pre-trial conference that they had been advised only a week or two earlier that police were in possession of two statements made by the father that were in two languages other than English, and that were each several hours long.⁸

⁸ Police have advised the Representative that the original Crown Counsel assigned to the prosecution was aware of all the statements/language issues and that the Crown Counsel who appeared in December was a different Crown Counsel who had been assigned to the file six weeks prior to the January 2010 trial date.

Crown Counsel advised the court that police had requested funding for the translation of these additional statements, but that funding had been denied. According to Crown, the matter had sat unattended on the desk of a senior police officer for "many months." The court noted in its judgment that "there was no explanation given as to why the Crown had not been made aware of the earlier two lengthy statements by the accused." The court's judgment does not record an explanation for why funding had been denied.

This time, the court denied the Crown's application for adjournment and directed that the trial begin as scheduled on Jan. 13, 2010. That direction triggered an application by the defence to have the prosecution stayed based on a breach of the rights of the accused under Sections 7 and 11(b) of the *Canadian Charter of Rights and Freedoms*.

Court Decision

Section 11(b) of the *Charter* provides that any person charged with an offence has the right to be tried within a reasonable time. The Supreme Court of Canada has considered this section of the *Charter* in a number of landmark criminal cases, beginning as early as 1990. The Supreme Court spelled out a number of factors that are to be considered in determining whether delay was unreasonable, including the length of the delay, the reason(s) for the delay, whether an accused had waived his or her right to a speedy trial, and whether the delay had prejudiced the position of the accused.

The judge analyzed the matter and followed the test articulated by the Supreme Court of Canada. In this case, the delay was about two years, and the accused had never waived his *Charter* rights. The judge observed that the initial police investigation was completed in a timely manner, but the subsequent delays, with the exception of a one-month adjournment requested by the defense, were the sole responsibility of the Crown and related specifically to the continuing inability of police to produce the translated statements.

On the final consideration, that of prejudice to the accused, the judge stated:

Of course I can and do infer prejudice, given the passage of two years and the strict bail conditions that were imposed. Also, I accept that HSO's health has been negatively affected by the delay. The medical information has not been disputed by the Crown. Therefore, I conclude that there has been a breach of HSO's rights under Section 11(b) of the Charter, in other words, his right to be tried within a reasonable time.

The judge then considered Section 7 of the *Charter*, which provides:

Everyone has the right to life, liberty, and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

The court held that in this case the failure to provide the translated statements to the defence meant that the accused would not know the specifics of the case against him. As such, the judge found that a breach of Section 7 was "self-evident." Not having access to those statements meant that the accused could not provide "full answer and defence," a central principle of fundamental justice.

Having found that both of the alleged breaches of the *Charter* had been demonstrated, the judge then considered whether staying all the charges was the appropriate remedy for the *Charter* breaches. She concluded that if the trial proceeded, the father would have to answer a case he did not know, and that there was no other option than to stay the charges. The court stated:

A stay of proceedings is appropriate only in the clearest of cases where the prejudice to the right of the accused to make full answer and defence cannot be remedied or where irreparable prejudice would be caused to the integrity of the judicial system if the prosecution were continued. A stay of proceedings will only be appropriate when the following two criteria have been met: (1) the prejudice caused by the abuse in question will be manifested, perpetuated or aggravated through the conduct of the trial or its outcome; and (2) no other remedy is reasonably capable of removing that prejudice.

Assuming that the Crown could proceed today and the trial commence, (the father) would have to answer a case that he does not know. In my view, the first step of the test has been met.

Are there other remedies available? The decision has been made that the accused's and the complainant's interviews will not be translated and transcribed. There is no indication that there has been or will be a change of that decision. I add that there is no change in that decision or an indication of a change of that decision, even in light of a peremptory adjournment. Even assuming that the decision is changed, the trial would have to be adjourned further and that would mean there would be a further breach of HSO's right to be tried within a reasonable time.

Are there other options, for example, the exclusion of statements? That remedy has not been sought and rightly so, as it would require the complainants to testify without being able to refer to their own statements in chief and without meaningful cross examination. That, in my view, goes to the very heart of making full answer and defence.

The judge was clearly disturbed by the facts, concluding her judgment by stating:

I have to add, though, that these are serious offences with real complainants. I have to add that it is very disturbing that the value of the complainants' sexual, physical and emotional integrity is less than the cost of translation and transcription. (The father) has been publicly charged with very serious offences and he now has no ability to clear his name. The investigator has put in time and effort and will see no resolution for the work that he has done. Regardless of what happens today in this courtroom, there is a tragedy.

The Section 810 Recognizance

Even though the criminal charges were stayed, the judge did place the father on a recognizance under Section 810 of the Criminal Code. A recognizance in these circumstances functions somewhat like a bail order, as the court can impose conditions on an individual who caused another person to fear personal injury, and the individual can be arrested and charged for breaching those conditions.

The recognizance prohibited the father from having any direct or indirect contact with his wife and children, prohibited him from possessing weapons, prohibited him from being within a five-block radius of the family home (the location of which was not identified), and it also identified, by name, three schools where he was prohibited from being within a three-block radius.

By naming the three schools, rather than simply designating an entire community or area as a prohibited zone, the order identified schools the accused father's children were attending. Police were concerned that this inadvertently placed the family at greater risk if the father had intentions of retaliating, and immediately put additional safety measures in place.

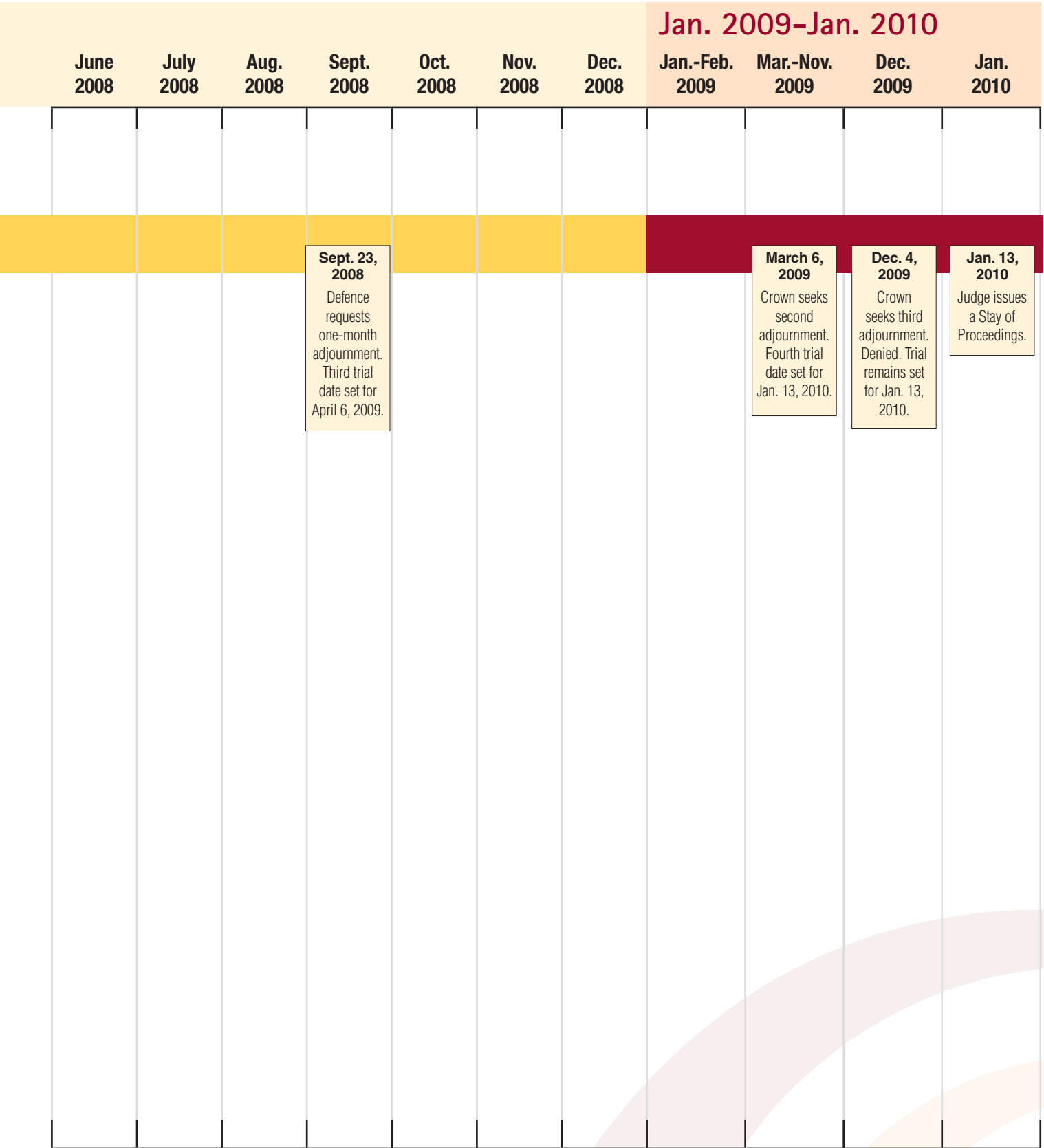
It fell to the primary police investigator to meet with the family and inform them that charges had been stayed. During that meeting they questioned whether or not the outcome was the result of someone in the justice system having been bribed. This was a common occurrence in their former homeland and a telling commentary on their own experiences within the Canadian justice system.

Timeline of Significant Events

Aug. 2005–July 2007

Jan. 2008–Dec. 2008

Aug. 2005- Sept. 2006	Oct.-Nov. 2006	Dec. 2006	Jan.-Feb. 2007	March- June 2007	July-Dec. 2007	Jan. 2008	Feb. 2008	March 2008	April 2008	May 2008
Child Abuse Allegation Leading to a Stay of Proceedings										
Aug. 2005 Family arrives in Canada.	Oct. 2006 Oldest daughter stops going to school, alleging bullying.	Dec. 2006 Father and oldest daughter go to Emergency for treatment of injuries – report “gang attack” to police.	Jan. 2007 Public Health Nurse and family service worker begin working with the family.	Mar. 2007 Oldest daughter returns to school.	July 2007 Father leaves Canada.	Jan. 2008 Disclosure to school counsellor.		March 13, 2008 Father is released on bail. Trial date set for June 2, 2008.		May 9, 2008 Crown seeks adjournment. Second trial date set for March 2, 2009.
						Jan. 15 and 24, 2008 Criminal charges laid against father.				
						Jan. 16 2008 Father returns to Canada and is arrested.				
						Jan. 2008 SCAN Team begins working with the family.				



Finding

The girl and her family members in this case were effectively denied access to justice. A failure to provide necessary funding for translation and transcription services resulted in very serious criminal charges being stayed, and the circumstances of alleged serious child abuse not being tried. This is an unacceptable outcome that contributed to the suffering of an entire family, and in particular added to the distress and isolation of a girl who was allegedly victimized and severely traumatized.

The initial police and Crown responses to the daughter's disclosures of abuse to her school counsellor were timely and effective. Despite the language barrier, police were able to conduct initial interviews with the victims and assemble sufficient evidence to have Crown Counsel approve charges. They were also able to work effectively with Crown Counsel to obtain a Canada-wide warrant, so the accused could be arrested immediately upon his arrival in Toronto, removing the risk of his eluding police at his final destination in Vancouver.

Once the father had been arrested and appeared for an initial bail hearing, neither the Crown nor police anticipated he would be able to meet the requirement of a cash deposit of \$5,000 to secure his release. It was a surprise when a friend of the father's made that deposit on his behalf in March 2008. Nonetheless, the court-imposed no-contact conditions and the removal of the family from their former community to a transition house appeared to have provided them with a degree of safety and security.

The sole issue that remained outstanding in the investigation was the translation of the statements of the two main complainants, and then the transcription of those translated statements. Transcription means recording the translated statements in a written form. It is this written document that Crown is required to provide to counsel for the accused as part of their duty to disclose all the relevant material in their possession.

The lack of approval for the \$40,000 required for translation services was not based on a failure to appreciate the importance of the evidence or the legal requirement to provide those statements to the accused. Police were well-acquainted with the consequences of failing to disclose or provide relevant evidence and were also aware of the risks associated with a delay in providing that material.

Police can and do use their own personnel for translation services, often in conjunction with the investigation of major crimes and organized crime. Although the primary investigator had approached these specialized units seeking assistance, all their staff were fully engaged with their own work.

There is a pool of qualified interpreters whose names are provided to individuals involved in the criminal process by the Court Services Branch of the Ministry of Justice. These interpreters work with witnesses and accused persons at no cost to translate what is occurring in court and to assist them in giving evidence. Unsurprisingly, given the changing nature of the population of B.C., interpreters are used on a daily basis in courts throughout this province.

Although some of those interpreters could function as translators for police, they would be working as independent contractors and billing police for their services. The availability of a qualified translator can sometimes depend on how many people in the community have the particular language as their first language.

Although assessing the qualifications of a potential translator or interpreter can pose challenges, in B.C. the Society of Translators and Interpreters provides certification for court-interpreting services based on a candidate successfully completing a written and oral exam. Vancouver Community College also offers a certificate that is recognized by Court Services as proof of accreditation to provide interpretation.

In this case, the primary investigator decided on the solution of playing the taped statement to a translator who would then record his translation in English onto a separate recording. That recording would then go to police clerical staff for transcription. Although this had the advantage of using in-house resources for the transcription and reducing costs, it was impossible to complete the process in a timely way, and was not completed before counsel for the accused moved for a stay of proceedings.

In this case, the alleged perpetrator was charged with serious violence and sexual abuse of a child. Numerous serious charges were approved after being reviewed by the Crown. While the Representative recognizes that no component of the justice system has access to unlimited funding, she cannot imagine any approach to prioritizing funds that would not make this case a top priority within the criminal justice system. Allowing budgetary considerations to outweigh the plight of the vulnerable children involved in this case is shocking, unacceptable and should never happen again.

Given the stark realities facing the prosecution in this case, what role did the Crown play in seeking to ensure that the prosecution was not jeopardized based on the untranslated statements?

The Criminal Justice Branch has advised the Representative that the Crown expressed its concern to the police about the delay in transcription at least four times during the

course of the file, and in March 2009 pointed out to police that the transcripts were "critical to the prosecution." The Criminal Justice Branch also pointed out that police were told by the Crown in May 2009 that witness statements had to be translated by "certified court interpreters." The Criminal Justice Branch acknowledges that this made matters more complex for the officer, and said that that requirement may not have been critically necessary in this case.

Whether or not certified court interpreters were necessary in this case, the real and critical issue was obviously how the prosecution was going to avoid being derailed because of the lack of transcripts. Surely the Crown became alarmed as repeated adjournments jeopardized the outcome of this case. That concern should have been shared with the senior Crown Counsel and senior police managers responsible for approving funding. With such serious charges and vulnerable alleged victims, some intervention or communication between senior levels of Crown Counsel and police services might have been expected, particularly during the period between March 2009 and January 2010, as time was running out. Regrettably, there is no indication that this took place at all.

It is not possible to determine how frequently issues arise in B.C. that negatively affect immigrant families and children in obtaining equal access to justice, as in this unfortunate case. However, with the changing demographics of B.C., it is highly unlikely that this is an isolated case. Dedicated attention will be required to ensure this does not happen again.

In addition to translation challenges, a number of other obvious obstacles can stand in the way of immigrant families' path to justice. Cultural barriers may prevent a woman or child from seeking help from those outside the family unit. Their previous experiences may have taught them to fear or mistrust police. Or, they may be fearful that police involvement will negatively impact their efforts at obtaining citizenship.

British Columbia's Violence Against Women in Relationships⁹ policy explicitly recognizes this dynamic:

Research indicates additional factors intersect in women's lives to compound their experience of violence and abuse. Immigrant and visible minority women who experience abuse from their partners are less likely to report it to the police and are often hesitant to use available support services, or be unaware that they exist. An immigrant who has not fully settled in Canada may be unfamiliar with laws, socio-cultural norms, their rights and responsibilities. They may lack social networks, and/or may have limited English language skills which may impact on their interactions in the justice system.

⁹ Ministry of Public Safety and Solicitor General, 2010.

The Representative has spoken out previously on issues impacting immigrant women or families facing violence and seeking the support of the police and others for safety planning. The 2009 report of the Representative's investigation, *Honouring Christian Lee – No Private Matter: Protecting Children Living with Domestic Violence*, identified issues related to the provision of services to immigrant families who did not have English or French as their first language:

It is difficult for any abused person to talk to a stranger about abuse. Limited language proficiency makes things worse. A perpetrator of domestic violence can use limited language proficiency as a way of controlling behavior. Without the availability of someone who can speak the language of an immigrant woman, a program or service will not be able to meet its goals of doing all it can to assist her. Neither the Victoria police nor the social worker made use of interpreters during their interviews with the mother. It is important to note that an immigrant's ability to speak with reasonable clarity in a comfortable social setting does not automatically translate to the kind of clarity necessary when speaking with police or social workers in stressful situations where precision is extremely important.

The immigrant population in B.C. is growing and appropriate resources and supports must be in place to accommodate the needs of that vulnerable population, particularly the children of immigrants.

4 Recommendations

Recommendation 1:

That the Ministry of Justice develop a policy that requires that Senior Crown Counsel review all cases where a prosecution affecting the welfare or safety of a child could be adversely affected by procedural or investigatory barriers.

Detail:

- Cases where abuse of children is alleged should be a priority for monitoring and active case management.
- To facilitate file monitoring and reporting, a subset of files should be created where child safety/welfare is identified by initial investigators.
- This policy should be implemented by June 29, 2012.

Recommendation 2:

That the Ministry of Justice ensure a reliable and appropriately funded system of access to accredited translation and interpretive services is available throughout all stages of an investigation and prosecution.

Detail:

- This recommendation should be implemented effective immediately.

Recommendation 3:

That the Ministry of Justice produce an annual aggregate report on the outcomes of criminal prosecutions where a child has been a victim of violence, including cases that are stayed or otherwise terminated prior to trial.

Detail:

- The report should contain a sufficient level of detail to provide an understanding of the circumstances of the case and reasons the prosecution was not completed.
- The first aggregate report should report on cases occurring in the 2012-13 fiscal year.
- The first report should be issued by June 28, 2013, and reports then issued annually.

5 Conclusion

Analysis of the events in this case illustrates the complexity of issues in the administration of justice, and the unacceptable consequences when the administration of justice fails. What message does this outcome give to a vulnerable youth who disclosed repeated physical and sexual abuse? Undeniably, it tells her that her allegations had insufficient priority for police and the Crown to act decisively to deliver the documents needed for a timely court trial. It tells her that she didn't matter enough. And it must leave her confused about her safety in her new homeland.

Cases involving children and youth who are victims must be given priority. Our systems must become reliably adept at making the experience of children visible and responding dependably. A key step in making sure that happens is to monitor and report on outcomes in cases such as this one. Without reliable information and reporting, we cannot know if improvements are being made.

In this case, the issue was translation and interpretive services required because recent immigrants could not provide evidence in English. In other cases, there are other issues that provide barriers to justice. In no case is it acceptable for the administration of justice to fail vulnerable children and youth in British Columbia.



REPRESENTATIVE FOR
CHILDREN AND YOUTH

6 Sources and References

Interviews Conducted

- Senior Official, Ministry of the Attorney General
- Primary Police Investigator

Jurisprudence

- Court judgment: R. v. H.S.O., 2010 BCPC 0015;
http://www.provincialcourt.bc.ca/judgments/pc/2010/00/p10_0015.htm
- R. v Morin, [1992] 1 S.C.R. 771
- R. v Askov, [1990] 2 S.C.R. 1199

Ministry of Children and Family Development Records

- Child and Youth Mental Health File
- Family Service Files and Child Service Files
- Contract Service Provider File

Ministry of Housing and Social Development Records

- Income Assistance Files

Other Records and Documents

- *Court Interpreter Application for Spoken Language Interpreters*, Court Services Branch, Ministry of Attorney General (2011)
- *Domestic Violence Prevention and Reduction in British Columbia (2000-2010)*, Justice Institute of B.C. (2010)
- *Empowerment of Immigrant and Refugee Women Who are Victims of Violence in Their Intimate Relationships*, Justice Institute of B.C. (2007)
- *Honouring Christian Lee - No Private Matter: Protecting Children Living with Domestic Violence*, Representative for Children and Youth (2009)
- *Immigrant Population of British Columbia: 2006 Census Fast Facts*, B.C. Stats, (2008)
- Medical records
- Report to Crown Counsel
- *Violence Against Women in Relationships Policy*, Ministry for Public Safety and Solicitor General (2010)