



# Injecting a Sense of Urgency

A new approach to delivering justice in serious and violent criminal cases.

Greg Lepp, ADM

Alberta Justice and Solicitor General, Criminal Justice Division

April 11, 2013

*Alberta*  
Government

## Significant Causes of Delay in the Airdrie Case

### 1. Incomplete investigation and delayed disclosure

Charges in this case were laid at a very early stage, and were based mainly on a limited number of witness statements. After charges were laid, the Crown prosecutor was advised of additional information that required the police to go back to the complainant and conduct more interviews. All of this had the effect of delaying disclosure and setting back the dates for the Pre-Preliminary meeting and the Preliminary Inquiry. Charges in this case were laid prematurely. It is important to note that the *Askov* clock begins to run only after charges are laid, and that there is not a limitation period for laying indictable charges. If the investigation had been completed before charges were laid, it is very likely the case would not have been stayed. Police and Crown prosecutors share responsibility for insuring that investigations are completed before charges are laid.

### 2. Unnecessary and Repeated Adjournments

In this case, 38 months elapsed from the date the charges were laid to commencement of the trial. This time period included time for the accused's election, a Pre-Preliminary Inquiry meeting, the Preliminary Inquiry, and time between the committal to stand trial and the trial date in Queen's Bench. The reasons for delay are complex, as this case illustrates. Here is a breakdown of each of the steps:

#### First Appearance:

The accused was arrested on September 9, 2009 and released to attend court on October 1, 2009. This is a period of less than one month, which given circuit court availability and the need to find counsel is not unreasonable.

#### Election:

A period of three months elapsed from the accused's first appearance to his election. In part, the delay was caused by initial disclosure not being available at first appearance (including transcripts of the investigative interviews). The election was also delayed by two bail variation applications at the behest of the accused.

#### Pre-Preliminary meetings:

Sections 536.3 to 536.5 of the *Criminal Code of Canada* govern "Procedures Before Preliminary Inquiry." These provisions were proclaimed about 10 years ago when it was recognized that time to trial was expanding and that the Judiciary needed to exercise case management to

accelerate matters and get to trial faster. Ironically, the Pre-Preliminary procedure followed in this case had the opposite effect.

Upon electing Judge and Jury, counsel for the accused noted that no Preliminary Inquiry could be scheduled until the Pre-Preliminary Inquiry meeting was done. The first Pre-Preliminary Inquiry meeting date in this matter was set two months after the election was recorded.

Because of repeated adjournments, nine and a half months elapsed until the Pre-Preliminary Inquiry meeting was finally completed. Only then were dates selected for the Preliminary Inquiry. Ultimately, no admissions were made by the accused. The complainant, her mother, sister, and school friend were the identified witnesses. The witnesses were readily known in the disclosure package given to defence counsel shortly after charges were laid. On analysis, there appears to be no legitimate reason the required documents could not have been filed at the first Pre-Preliminary Inquiry meeting date and a Preliminary Inquiry date set then, if not sooner.

If the Preliminary Inquiry date had been set well before the Pre-Preliminary Inquiry meeting had been conducted, it is quite possible the case would not have been stayed.

#### Preliminary Inquiry:

The Preliminary Inquiry is an historical feature of our criminal procedure. The purpose of the Preliminary Inquiry is to determine if there is sufficient evidence to set the matter down for trial. Unless the Deputy Attorney General files a Direct Indictment, until recently a relatively rare event, the accused may insist on having a Preliminary Inquiry where the charges are serious.

In this case, the first Preliminary Inquiry date was set for June 17, 2011, which is approximately 20 months after the first appearance. This is a significant delay. In this case, the vast majority of the delay was before the Preliminary Inquiry, not between Preliminary Inquiry and trial.

If there had been no Preliminary Inquiry in this case, it is likely the case would not have been stayed.

#### Trial date:

The accused was ordered to stand trial on December 16, 2011 and his first Court of Queen's Bench appearance date was set for February 10, 2012. Once the file was in Court of Queen's Bench, it moved along in an appropriate timeline, and within one month (March 9, 2012) a trial date was set. That date was November 5, 2012 - eight months after it was scheduled. Factors that may have led to this delay include the fact that court does not sit in July or August, and that the accused was not in custody (although this factor would have lesser weight).