

"Source: Department of Justice Canada.

Trial within a reasonable time: a working paper prepared for the Law Reform Commission of Canada 1994. Reproduced with the permission of the Minister of Public Works and Government Services Canada, 2008."

Table of Contents

ACKNOWLEDGEMENTS	ix
CHAPTER ONE: The Need for Trial within a Reasonable Time	1
I. Trial within a Reasonable Time Is Desirable	1
II. The <i>Charter</i> Guarantee Is Not Sufficient	5
III. The Scope of This Working Paper	6
CHAPTER TWO: Approaches to Guaranteeing Trial within a Reasonable Time	11
I. The Causes of Delay	11
II. Lack of Resources Is Not the Primary Cause	11
III. Attacking Delay	15
A. The Administrative Approach — Caseflow Management	16
1. The Principles of Caseflow Management	16
(a) <i>Early and Continuous Control of Cases</i>	18
(b) <i>Time Standards</i>	19
(c) <i>Monitoring and Measuring Compliance with</i> <i>Time Standards</i>	21
(d) <i>Firm Dates for Trial and Intermediate Steps</i>	21
(e) <i>Other Factors</i>	23
2. Caseflow Management in Canada	24
3. Conclusion	30
B. The Legislative Approach — Statutory Limitation Periods	31
1. Limitation Periods Currently in the <i>Criminal Code</i>	31
2. The Period to Which Statutory Provisions Should Apply	32
(a) <i>Starting-Points</i>	32
(b) <i>Termination Points</i>	34
3. The Length of Limitation Periods	35
4. The Mechanics of Limitation Periods	42
5. Review of Decisions	47
6. Failure to Meet the Limitation Periods	48

IV. Both the Administrative and Legislative Approaches Are Necessary	49
V. A Study of the Operation of Criminal Courts	54
CHAPTER THREE: Simplified Election and Re-election Procedures to Expedite Trials	57
I. Introduction	57
II. The Role of the Preliminary Inquiry in a Revised Election Process	57
III. Election, Deemed Election and Re-election Provisions in the Present <i>Criminal Code</i>	61
A. Elections	61
1. General	61
2. Restrictions on the Right to Elect	62
B. Deemed Elections	63
C. Re-elections	65
1. General	65
2. Restrictions on the Right to Re-elect	65
IV. Justification for Elections and Re-elections	67
V. Proposed Revisions to Election, Deemed Election and Re-election Procedures	70
A. Elections	70
B. Deemed Elections and Choices Regarding Preliminary Inquiries ...	74
C. Re-elections and Waiver	77
CHAPTER FOUR: Pre-trial Mechanisms for Expediting Trials	81
I. Introduction	81
II. Pre-trial Motions	82
A. Pre-trial Motions Should Be Permitted	82
B. Motions before the Trial Judge at the Outset of Jury Trials	84
C. Forum for Bringing Pre-trial Motions and Their Effect	85
D. Issues to Be Resolved by Way of Pre-trial Motions	87
E. Time for Bringing Pre-trial Motions	88
F. Formalities of Pre-trial Motions	89
G. Renewal of Pre-trial Motions	89
H. Review of Decisions of Pre-trial Motions	91

III. Pre-hearing Conferences	92
A. Their Origins and Development	92
B. The Pre-hearing Conference as a Mechanism for Achieving Consensus on Non-contentious Issues	94
C. The Structure of the Pre-hearing Conference Should Be Set Out in Greater Detail	95
D. The Availability of Pre-hearing Conferences	100
E. Pre-hearing Conferences Should Not Be Mandatory	100
F. Agreements Reached at Pre-hearing Conferences Should Not Bind the Parties	102
G. Judges Presiding at Pre-hearing Conferences Should Be Permitted to Preside at Trial	102
 SUMMARY OF RECOMMENDATIONS	 105
 SELECTED BIBLIOGRAPHY ON CASEFLOW MANAGEMENT	 113
 APPENDIX I — “Trial within a Reasonable Time... Does the Right Still Exist?” by Stephen G. Coughlan	 115
 TABLES	
1. Median Total Time in Criminal Cases Disposed of in Upper Court — Locations in the United States, Canada and Australia	38
2. <i>Criminal Code</i> Election and Re-election Procedures	69
3. Our Proposed Election Procedures	73