

Alberta Justice

Chief Crown Subcommittee on Sexual Assault

Lloyd Robertson, Crown Prosecutor

Gordon Haight, Crown Prosecutor

Committee formed after

**Ottawa Making a
Difference Conference
(October 2004)**

Objective

Criminal Justice Division Operational Plan 2006-2009

“Working with ministry and community partners to identify gaps in services and explore best practices to develop strategies that will improve the criminal justice response to sexual assault.”

Committee Members

Name	Location	Organization
Gordon Wong Q.C.	Calgary Calgary	General
Lloyd Robertson	Calgary Calgary	General
Gordon Haight	Calgary Calgary	General
Eric Tolppanen	Calgary Calgary	Appeals
Deb Tomlinson	Calgary Calgary	Communities Against Sexual Abuse
Stephanie Bozzer	Edmonton	Alberta Association of Sexual Assault Centres
Judy Mackay	Edmonton	Head Office
Avril Herron	Edmonton	Edmonton General
Steve Marissink	Edmonton	Solicitor General and Ministry of Public Security
Rodney Clark	Peace River	Crown Prosecutor (now Chief Crown Prosecutor Wetaskiwin)
Deb Drissell	St. Paul	Chief Crown Prosecutor
Bert Skinner	Red Deer	Chief Crown Prosecutor
Robert Coleman	Lethbridge	Chief Crown Prosecutor
Ian Fraser	Wetaskiwin	Crown Prosecutor
Tiffany Dwyer	Fort McMurray	Crown Prosecutor (now Calgary General)

After full collaboration/consultation with other Stakeholders and Agencies, a research based report was presented in April 2007.

The report contained 27 recommendations aimed at improving the overall Criminal Justice approach to Sexual Assault Crimes.

Recommendation 1:

Criminal justice practitioners need information and training about sexual assault, and increased awareness of sexual assault myths, in order to sensitize themselves to victim's realities. It may be useful to participate in, and perhaps co-sponsor, sexual assault conferences dedicated to the sharing of information between investigators, prosecutors, medical professionals, educators, sexual assault workers, and women's organizations. Sexual assault reform requires a team effort consisting of professionals and community groups. Every organization has specialized information, and a different perspective on what should be done to combat sexual assault. Conferences would also facilitate the uniform delivery of service.

Recommendation 2:

Develop a standard province wide brochure or video that can be shown to a sexual assault victim who is unsure of whether they wish to pursue charges (and make available to the general public). Topics to include:

1. The burden on the Crown to prove a case beyond a reasonable doubt;
2. How a finding of not guilty does not mean a judge disbelieves the victim;
3. The rights of a witness and limitations on cross-examination;
4. Circumstances as to when third party records such as counseling records can be ordered disclosed to the accused (this list is not exhaustive by any means).

Recommendation 3:

Public awareness campaigns are needed to dispel common sexual assault myths that flourish in our society, as it is these myths which justify and perpetuate sexual assault. Given Alberta Justice's duties in conducting prosecutions this would be best advanced by other Government Departments such as the Solicitor General and Ministry of Public Security or Children's Services and non-government agencies. Alberta Justice should assist where possible.

Recommendation 4:

Each Crown office will examine whether or not the investigation and prosecution of child sexual assault cases could be enhanced with additional child-friendly measures.

Recommendation 5:

Task the Aboriginal Liaison Prosecutors with identifying gaps in service and explore best practices to develop strategies that will improve the criminal justice response to sexual assault in Aboriginal communities.

Recommendation 6:

Hinton is operating a project where sexual assault offenders are required to participate in treatment and counseling where the offence arises out of an Aboriginal family relationship. Treatment and counseling is offered as an alternative to our traditional approach to sexual assault. Further study of this approach is needed.

Recommendation 7:

Assign specialized and/or experienced Crown prosecutors to sexual assault cases, in both rural and urban areas, where feasible. Vertical prosecution is also recommended.

Recommendation 8:

Regional Chief Crown prosecutors to work with Solicitor General and Ministry of Public Security and local community agencies to enhance victim's assistance units and services offered in support of sexual assault victims through additional training. As well, encourage the creation of victim's assistance units in their local areas that have the capacity to address the needs of sexual assault victims where no units currently exist.

Recommendation 9:

Initiate discussions with regional health authorities to ensure appropriately trained medical staff are available to examine sexual assault victims. The Crown should be prepared to train medical staff as necessary. Cross training with police and sexual assault counselors would be preferred. Part of these discussions should concentrate on how to make the court experience more acceptable to medical witnesses.

Recommendation 10:

Regional Chief Crown prosecutors to monitor whether RCMP Major Crimes are being called in where appropriate and report to their Director when that is not happening. Regional Director to discuss with RCMP “K” Division if additional resourcing of Major Crimes is needed to enhance police coverage for more remote locations.

Recommendation 11:

That Criminal Division speak with Solicitor General and Ministry of Public Security (Victims Programs and Services), community agencies, sexual assault centres, or other interested groups about the feasibility of conducting a needs assessment related to the challenges faced by disabled sexual assault victims.

Recommendation 12:

That Criminal Division speak with Solicitor General and Ministry of Public Security (Victims Programs and Services), community agencies, sexual assault centres, or other interested groups about the feasibility of conducting a needs assessment related to the challenges faced by immigrant sexual assault victims.

Recommendation 13:

That the Government of Alberta provide sustainable annual funding to sexual assault agencies.

Recommendation 14:

Train the police and medical personnel who meet with a victim of sexual assault how multiple interviews of the individual can lead to a lesser likelihood of conviction and may in fact lead to the Crown forming an opinion of no reasonable likelihood. Efforts are needed to reduce the number of times the victim must recount the events of the offence.

Recommendation 15:

Pursue the British Columbia protocol for the collection of sexual assault forensic evidence kits in Alberta.

Recommendation 16:

Where practicable, pursue victim friendly facilities co-locating agencies dealing with victim's needs. The feasibility of a Crown prosecutor being at such a facility will be examined.

Recommendation 17:

Review the fee schedule for medical experts to determine if compensation for conducting sexual assault examinations is adequate.

Recommendation 18:

Consider an amendment to the *Criminal Code* allowing for a search and collection of evidence from an unconscious person where they are believed to be a victim of a serious and violent offence, and there is no immediate prospect of the victim regaining consciousness. Consider additional amendments to the provincial *Health Information Act* to allow for a freer flow of information between health officials and investigating police agencies, especially in the case of unconscious victims who have apparently been sexually assaulted.

Recommendation 19:

Provide additional training for police regarding evidence-based prosecutions and the need to further investigate a sexual assault case to provide more than a “he said, she said” case. Cross training is recommended, particularly regarding investigative and interviewing strategies. Sensitivity, open-ended questions, and detailed explanations are paramount. Police should provide standard one party consent documentation to simplify obtaining necessary judicial authorization.

Recommendation 20:

Assistant Director, General Prosecutions Branch (Regional) to seek pre-charge consultation agreements with RCMP K Division. A suggested pre-charge agreement is attached as Appendix D.

Recommendation 21:

Identify subject matter experts in each Crown Prosecutor's office, and provide their contact information to the local police agency. The potential exists for larger offices to assume this role for smaller Crown offices, but there are advantages to assigning this responsibility on a local level. This would certainly be necessary on a local level should pre-charge consultation protocols be entered into.

Recommendation 22:

Create a sexual assault case law databank that can be accessed through the Criminal Justice Intranet. Prepare a compendium of past charging sections, available on the Criminal Justice Intranet, to aid in laying proper charges in historical sexual assault cases. The Appeals Branch has agreed to produce the sexual assault case law databank. A compendium of past charging sections is available for review and publication, as recommended.

Recommendation 23:

Advocate for early trial dates for sexual assault cases to minimize continued trauma and anxiety about the court process for victims.

Recommendation 24:

Creating an educational package for all Crown prosecutors that can be delivered at an Alberta Crown Attorneys Association (ACAA) conference and Crown school.

Recommendation 25:

Urge the RCMP Forensic Crime Lab to improve turnaround times for DNA analysis in sexual assault cases. This may involve advocating for increased resources, or resorting to using private laboratories that may be able to conduct quicker analysis if the RCMP is unable to improve turnaround times.

Recommendation 26:

Cross train police, victim's advocate groups and medical staff so all parties know what can be expected in an investigation and subsequent prosecution. An example of a fruitful area of training is what expert witnesses can say in regards to vaginal or anal tears that are often seen in a sexual assault examination by trained medical professionals. Is this evidence helpful in rebutting a consent defence?

Recommendation 27:

Create a Guideline on Sexual Assault to be included in the Crown Prosecutor Policy Manual (Agent's Manual) with best practices and guidance to Crown in this area. This would be similar in nature to the Domestic Violence Guideline to Crown.

The Deputy Minister of Alberta Justice directed that strategies be developed to implement these recommendations and start effecting actual change.

Alberta Justice developed 13 Implementation Strategies and began to work on them immediately.

Our results so far

**1. Alberta Hosting the April
2008 Making a Difference
Conference.**

2. Fall ACAA Conference will be devoted solely to Sexual Assault Prosecutions

- Education
- Awareness
- Cross Training with other Professionals
- September 24-26, 2008

3. Annual Conference on Sexual Assault Prosecutions to be held each Spring at the Banff Centre.

Format divided into two areas:

- Year 1. Advanced “Crown School” for mid-senior prosecutors on Sexual Assault Prosecutions. Aimed at increasing effectiveness in the legal process.
- Year 2. Cross Training and Development of Best Practices Protocol. Aimed at Crown Prosecutions and related professionals.

1st Conference Spring 2009.

Estimated cost \$35,000 based on 50 attendees.

4. Sexual Assault Legal Data Bank

- Sentencing cases
- Other topics relevant to sexual assault prosecutions (i.e. Mistaken Belief as to Consent)

Collected in one place, categorized, annotated.
Available to Crown Prosecutors on Alberta
Justice Intranet Site

December 31, 2008

5. Public Awareness Video Production

Meant to enhance victims understanding of and confidence in the reporting and trial process.

Alberta Association of Sexual Assault Centres
(AASAC)

Calgary Communities Against Sexual Assault
(CCASA)

Solicitor General and Public Safety
- waiting for funding.

6. Identifying gaps in service delivery to Aboriginal Clients

- New Regional Director (Orest Yereniuk) tasked with forming a separate committee on this
- Report expected December 31, 2008

7. Evaluation of Hinton Sexual Assault Program (for Aboriginal Offenders)

Regional Director and Hinton Chief Crown Tasked with this.

8. Flying Squad Concept

devoted to:-

- Ensuring properly trained and experienced prosecutors are available for serious and complex prosecutions in any corner of the province.
- Timeline – evaluation of Flying Squad feasibility December 31, 2008 and implementation 2009?
- Alberta Justice Phase IV Review (organizational structure)

9. All Crown Prosecution Offices taking Action on two Key Concepts

- Enhancing child friendly measures
- SME (subject matter experts available to police).

Calgary – Edmonton → Implemented

- New Calgary Court Centre
SME available to CPS and EPS Dedicated Crown Prosecution Services to Sexual Assault cases.

10. Needs Assessment for challenges faced by Immigrant Sexual Assault Victims and Disabled Sexual Assault Victims

- CCASA – funding in place to begin on this
- Searching for an appropriate contractor to analyze and collect appropriate literature and research this topic

11. Improvements in the collection/analysis and storage of DNA samples (BC Protocol)

- 3 year pilot project, beginning purpose is to study the BC Protocol where samples can be kept for a period of time while victim makes a decision on whether to pursue criminal charges
- Funding achieved in February 2008
- CCASA moving forward on this with Support from Alberta Justice and Solicitor General and Public Safety

12. Addressing RCMP Forensic Lab

- Completed
- FLS Consultation Committee has resulted in: -
 - a) Improvements to Edmonton Forensic Lab
 - new site for DNA collection (evidence recovery), extraction and analysis.
 - b) 80 new Scientists and Technicians hired Canada wide (40 dedicated to Edmonton Lab).

c) Greatly Improved Service to Police Agencies and Prosecution Services:-

-15 -75 day target on homicide cases;

-15-90 day target on sexual assault cases.

d) New Crime Scene Liaison Officers

13. Legislative Reform

To address collection of evidence (DNA) from unconscious persons where they are believed to be the victim of a serious and violent crime and there is no immediate prospect of the victim regaining consciousness.

-Be Patient!

- 3 strategies:-

1. Uniform Law Conference (August 2008)

2. FPT Process

3. Provincial Legislative Change (i.e. Health Information Act) plans to consult with Health to put forward an amendment to provincial legislation

14. Funding for Sexual Assault Agencies

Three year funding for Alberta Association of Sexual Assault Centres beginning April 2008. Sexual Assault Centres received funding three years ago for the first time. A further funding plan for 2008 – 2011 has not yet been approved.

15. Co-location of Agencies Collaborative Services Centre in Calgary

Moving to a new facility as of July 1, 2008

- Co-location of CSART (Health – SANE, CPS, CCASA)
- Domestic Violence Coordinator for Health

16. Alberta Justice Guideline on Sexual Assault Prosecutions

- To be added to the new on-line Agent's Manual
- Scheduled for completion March 20, 2009
- This guideline to be tasked to crown expert no later than May 1, 2008
- (Update – May 7, 2008 – the writing of this guideline has now been tasked to Lloyd Robertson and Eric Tolppanen and is proceeding as scheduled)

17. Sexual Assault Prosecutions Coordinator/Trainer

- Alberta Justice Criminal Division Directors met on this topic in March, 2008.
- Agreement reached that this would be a province-wide coordinator of sexual assault prosecution policy and training.
- This is a new position created for the specific purpose of advancing many of these strategies and ensuring a consistent prosecutions policy and Best Practices model for all of Alberta.
- Position to be filled by April 1, 2009.

18. Police Acceptance of Recommendations

Many of the recommendations and strategies from the April 2007 report require the participation and cooperation of Police Agencies.

Police will require assistance of Alberta Justice to move forward on these recommendations.

All of the implementation strategies affecting Police agencies were approved and accepted at the February 7 SCOPE committee meeting by all Police Services on the committee.

A SCOPE sub-committee was formed to assist in the co-ordination and implementation of those recommendations/strategies affecting the Police.

It will be chaired by Alberta Justice.

Next meeting is June 18, 2008.