

GUIDING PRINCIPLES FOR EFFECTIVE CASE MANAGEMENT

The criminal justice system exists to provide order that is just. To have the necessary moral authority it must protect the rights of the accused, including the right to disclosure and a fair trial, and it must resolve matters effectively. Effectiveness is not mere efficiency or cost cutting. It is ensuring that every step of the process contributes to a just result by working the way it is intended to work, without waste.

Management of cases that go to trial is part of this. This paper identifies five basic principles that can contribute to the effective handling of cases.

1. Cooperation & expectations: Effective case management requires cooperation and clear expectations.

The sectors or “players” in the justice system are autonomous within their sphere. This distributes power and identifies where responsibility for each decision resides. No element is “in control” of the justice system. But each depends on the others. The combination of autonomy and interdependence means they must cooperate appropriately to be effective.

It follows that decisions affecting process should be made with consideration for the impact they have on the rest of the system. The needs of each element of the formal system as well as the accused, witnesses and victims must be considered in developing effective case management practices.

A successful case management system meets broadly accepted expectations and respects the interests of participants. Cooperation is informed by stated, mutual expectations that enable accurate prediction of events and requirements, including resource requirements and performance standards.

The public expects accountability and good stewardship of the criminal justice system.

The Court expects the participants to prepare and conduct each case properly in accordance with the relevant laws, rules and practice directions. This includes early consideration of issues so that hearings focus on what can only be resolved in court and counsel arrive prepared to optimize each appearance.

There is or ought to be an expectation that all counsel actively cooperate with each other and the court in the effective management and conduct of cases.

Other people affect the operation of the courts. Witnesses and victims who understand the system and their part in it will contribute more effectively to the process. The timely provision of information and resources to them pays dividends. This is particularly true for the accused during the initial stages of a case.

The proper disposition of a case requires management of a long supply line consisting of many people and much information. People seen as minor or peripheral participants such as prisoner escorts and policymakers can have a significant impact on court operation. Failure to bring a prisoner to court for a scheduled appearance defeats the best-case management system. Failure to advise authorities that a prisoner is no longer needed for court results in unnecessary prisoner movement. Significant changes in enforcement policy affect demands on the criminal justice system.

Fundamental to cooperation is development of realistic expectations and obligations that respond to the needs of all criminal justice constituencies. One such expectation is that justice ministers within government will take a leadership role in acting as a broker amongst the criminal justice constituencies and in advocating for the support and resources that the system may demonstrably require.

Implementation Examples

- a. Pamphlets and web pages that explain court procedures and how to obtain legal counsel in lay terms should be encouraged not only as a means of promoting justice in individual cases but also to improve the effectiveness of each appearance and of the system as a whole

2. Leadership: The court has a leadership role in effective case management.

A system that can't be managed must be lead. Leadership among autonomous players requires the application of influence and in the justice system that requires moral authority. Without a leader, cooperation is less likely to happen and is unlikely to become the norm.

Some judges are uncomfortable with an active role in case management. A judge must, above all else, be above all else. The judge is the impartial apex of the adversarial system's triangle, deciding guilt or innocence in each case without regard to external considerations.

But in our adversarial system, judges have the independence and authority to lead the other players. In short, their impartiality gives judges a unique opportunity to lead effective case management.

We believe good leadership does not detract from impartiality. The judicial leadership we are calling for is less about managing the cases than it is about ensuring the parties are prepared for an effective hearing. While some of the skills and activities required by case management are fundamentally different than the traditional role of judges, case management is not inconsistent with it. Judges have always controlled procedures to ensure hearings are fair and effective. Extending this role "upstream" is only sensible since the effectiveness of a hearing is largely dependent on the preparedness of the

parties. We believe judges and court administration can oversee cases to ensure they are managed in accordance with commonly accepted norms while retaining the flexibility to respond to the unique needs of individual cases.

Judicial leadership does not absolve other players of their responsibility to contribute to an effective justice system. Leadership does not work in isolation. It requires cooperation, respect and the frank exchange of ideas and concerns. Once sectors have forged cooperative relationships and a genuine regard for the roles of each participant, a procedure to effectively manage cases in accordance with appropriate principles becomes a common goal because the relationship makes it impossible to blame the others for common problems.

In short, it is not so much a matter of judges managing cases as seeing to it that cases are managed in accordance with generally accepted standards. Our vision is not that judges manage more. It is that they will manage less because effective case management by each sector will be the norm.

Good case management practices can be established without judicial leadership but judicial support is essential to the application of case management. Consistent enforcement of rules, forms, and expectations for pre-appearance preparation is key to each sector managing cases efficiently.

Efficiency, effectiveness and access to justice are all interconnected. The court, through judges and court administration, with the assistance of other justice system participants, has a leadership role to play in meaningful case management.

Implementation Examples

Active case management by the court

- a. In B.C, Criminal Caseflow Management Rules were developed and implemented with active participation by the judiciary, and are now integrated into criminal case processes.
- b. In Ontario, a criminal case management protocol has been developed.
- c. In Ontario, and several other jurisdictions, Judges regularly participate in educational sessions on their role in the management of cases.

Case preparation

- a. Prosecution policies should guide and encourage early resolution.
- b. Requirements for early and complete disclosure expedite the process. BC's Rules require counsel to assure the court that they are ready for trial and have stated a preliminary position on sentencing in advance of the trial date.
- c. Police can expedite disclosure by vetting, within legal parameters, sensitive witness information and providing duplicate copies of Reports to Crown Counsel for disclosure.

3. Culture: Effective case management creates a criminal justice system culture of responsibility, awareness, and appropriate collaboration.

The third major guiding principle for case management is the cultivation of a case management culture. Sloppy case management is no more acceptable than sloppy case presentation.

The expectations and standards called for above will only be effective to the extent they are followed. Obviously this requires enforcement. We are aware of a study of Scottish Courts that indicates that the degree of judicial tolerance for adjournments is a key variable in effective case management. There are more interests at stake than the Crown and defence but judges sometimes feel they have little choice but to grant an adjournment if Crown and defence agree on the need. This may be in the interests of Bench and Bar collegiality or in the larger interests of justice – regardless of the reason counsel aren't prepared, it would be an injustice to proceed. But put simply, there are many reasons why counsel may want an adjournment and judges have the means to signal their displeasure at some of them even while granting the adjournment. Counsel should be put to the test by the court so that, even if an adjournment may be necessary, counsel will have the benefit of the court's views to guide future case preparation.

Given our views on the tight relationship between case management and case flow management, we recognize that enforcement of expectations is most effective when each case can be understood in the context of all the cases. Under principle 5 we discuss information needs.

That said, a case management culture is best created collaboratively. But once, the decision has been taken to create one, jurisdictions should consider a "case management blitz" to create momentum, signal commitment and to quickly raise management standards across the system. Professional development programs for the Bench and Bar can be coordinated to concentrate on case management for a period of one or two years in order to validate the concept, support its implementation, equip each player with the necessary knowledge, explain the rules, and keep lawyers current on substantive issues affecting decision-making at each stage of a case, such as sentencing.

A case management culture demands case management data and information. As has been said, "You can't manage what you can't measure." While the quality of justice defies measurement its quantity doesn't. The justice system should demand the same evidentiary rigour about its case processing as it does about its cases. Some judges and lawyers are apprehensive about data collection – perhaps fearing somehow that it will detract from the quality of justice done in each case. We do not think this stands logically beside demands for access, efficiency and effectiveness.

Implementation Examples

- a. Research and data analysis about the justice system should be within the system, to enhance understanding of issues of common interest.
- b. Professional development should encourage a sense of shared responsibility for the justice system, and a vision of justice as a “system of systems”.

4. Local Control: All case management is local.

Effective management of cases is the product of local commitment to good practice. Legislation can enable and support case management but the local bench and Bar will manage well or badly according to their needs and views. And if local control were not inescapable it would still be desirable. It is crucial to effectiveness because only local control can respond to local pressures, issues and personalities. Implemented cooperatively, it brings sectors together, increases communication, understanding and respect for their various roles and their interdependence, and provides a sense of ownership in new initiatives.

The Centre of Criminology report found high variance in case processing times throughout the jurisdictions, demonstrating the need for local or regional solutions that are in line with accepted guiding principles.

But local control can stifle innovation. If local control is to be effective it is vital we strengthen our capacity to share best practices and to provide the data and analysis needed to assess the effectiveness of local practice and alleged “best practices” in particular.

We have examined case management programs based on rules of court, legislation and practice notes. Each has strengths and weaknesses and one is not inherently better than the other. Each location must adopt an approach that is acceptable to local justice system participants.

Implementation Examples

Local case management or court users committees enhance understanding of issues and pressure points and encourage shared initiatives to improve efficiency and effectiveness.

Joint working groups on particular issues of local importance improve communications, build relationships across sectors and foster a sense of ownership and responsibility within the system.

5. Management information: effective case management requires management information.

The justice system is, in some respects, an information system. It gathers, analyzes and evaluates information about someone or something in light of legal information. Considering the volume of information the system handles it is ironic that so little information *about* the system is widely available. A great deal is known about each case and very little about cases in aggregate. Knowledge, in the form of statistics or management information, is a crucial component in understanding exactly what is going on and where to develop and focus initiatives.

There is a large body of national data at the Canadian Centre for Justice Statistics that is supplemented by local data in many jurisdictions. Certainly the quality and usefulness of data can always be improved. Meaningful comparisons over time and location require standard definitions and protocols. Something as basic as what is “one case” can mean different things to different participants within jurisdictions and nationally and can produce very different data as a result.

Case processing time data is important for many case management decisions, especially in relation to policy development and establishment of local resource targets. Yet it paints different pictures depending on whether the time when a warrant is outstanding is counted or not in the data.

But even given these concerns, the information currently available is extensive and valuable. It appears a major impediment is lack of demand for the information or lack of capacity to utilize it. This should change. The Justice Information Council, composed of the provincial deputy ministers responsible for justice in Canada, should attach a higher priority to the collection and dissemination of information about the justice system generally and case flow in particular, and jurisdictions should ensure they fully exploit the potential of CCJS.

Better information is needed to ensure we understand both the problem and the alleged solution. The Centre of Criminology of the University of Toronto study notes a dearth of research on the nature and sources of the case processing problems and suggests that some assumptions about procedures to improve the efficiency of the courts are incorrect. The report indicates that preliminary inquiries might actually enhance case processing time.

We may be closer to useful data than appears. Utilizing data, made available through information technology, can assist each sector to actively manage their own process issues; and jointly develop strategies to address issues that involve one or more of them so they can collectively ensure the justice system makes effective use of its time and resources.

Implementation Examples

Integrated management information systems such as Justice Enterprise Information System (JEIN) in Nova Scotia and Justice Information System (JUSTIN) in BC connect parts of the justice system and provide certain types of process information, which can be used for management purposes. These systems may also provide ready access to information about movement of prisoners, case status, correctional histories and other information necessary to the efficient management and analysis of court systems.

IMPLEMENTATION APPROACHES

There are several ways case management or case flow management can be implemented. These may be generally described as:

1. Moral suasion – this is the judge who actively manages their courtroom. These are not formal rules. For example in this courtroom, counsel will provide a written outline of their argument.
2. Local practice – this is moral suasion applied to a set of cases. It is usually geographically circumscribed but can be based on case type. For example, in all commercial crime cases counsel will provide a draft exhibit list.
3. Practice preference – this is more formal and indicates an official preference but is not mandatory. For example, counsel should attempt to pre-mark exhibits on commercial crime cases. It may be applied to a local or general area. Unlike local practices, they are usually published. They are frequently issued by the Chief Judge or Justice but can also be issued by Administrative Judges.
4. Practice directives or notices– these are formal directions that have binding force. For example, counsel will use and file a specific form when mutually agreeing to limit the scope of a preliminary inquiry. Practice directives are normally issued by the Chief Judge or Justice. They are published.
5. Statutory enactments – these are case management and case flow management decisions that are imposed uniformly through a statute. An example is the focusing hearing for preliminary inquiries under s. 536.4(1).
6. Rules of Court – these are broad based rules which can include case management and case flow aspects that are created under s. 482. They require the approval of the lieutenant governor in council of the relevant province and must be published in the Canada Gazette. The British Columbia Criminal Case Management Rules were promulgated under s. 482 after approval by a majority of the provincial court judges in British Columbia.
7. Case Management Rules – these are specific case management rules created under s. 482.1. This rule making power was created because there was uncertainty about the scope of rules permitted under s. 482. Rules made under this section require the approval of the lieutenant governor in council of the relevant province and must be published in the Canada Gazette. This section permits rules that delegate power to court administrative staff.

At present the Criminal Code [ss. 482(5) and 482.1(6)] provide that both Rules of Court and Case Management Rules can be supplanted by the Governor General in Council to secure national uniformity. As outlined further below, consideration should be given to streamlining the process of creating case management systems – either through practice directions or rules – such that there is local autonomy over case management approaches.

RECOMMENDATIONS

The goal of case management is that each appearance be effective and timely, and that duplication and waste of effort be avoided. Expectations and standards should be clear and reasonable so that each sector can rely on the other to meet its commitments. Care should be taken to ensure that expectations clearly fall within a sector's role and articulate a healthy relationship between sectors so they are not seen as mere attempts at off-loading or cost shifting.

With this as a model, we recommend the following:

1. Establishment of Advisory Committees:

- a. There should be permanent case standards advisory committees in each province and territory established by the Chief Justice or Chief Judge to collaboratively identify expectations and standards in respect of case management, and the means by which conformity to them may be measured and enforced.
- b. Depending on local factors such as the size of the jurisdiction, the number of courts, the geography, it may be desirable to establish more than one committee (per level of court) or to establish subcommittees.
- c. The committees should be composed of representatives of the justice sectors including, the bench, Crown, defense Bar and court administration. Local committees may consider including representatives from the police on such committees either generally or on an issue-by-issue basis.

2. Role of Committees:

The committees should:

- a. see their role as recommending to the Chief Justice or Chief Judge the most appropriate means to address local case management issues.
- b. collaboratively identify expectations and standards in respect of case management that are specific to each of the justice sectors.
- c. review and make recommendations to Chief Justice/Chief Judge or Attorney General (as appropriate) on whether the expectations and standards should be embodied in rules, practice directives, guidelines or some combination of all three depending on the substance.
- d. make a statement of principles including:

- i. Effective management of cases is a shared responsibility;
- ii. It is the duty of the parties to resolve issues that can be resolved without a judge and to efficiently present to a judge those issues which cannot;
- iii. Judges not only have the right to insist that parties are prepared to present and argue cases when they come to court but judges have a duty to the parties and the public to insist that they are.

3. Tools to Use or Recommend:

a. Self-Management Through Checklists

- i. Each sector, including the judiciary, should be encouraged to develop their own checklists and other guides which aid memory and delegation of routine tasks. Checklists are common in many areas of practice today. While it would be advantageous to develop them pursuant to the Committee's expectations and standards, if there is no committee or it is proceeding slowly, each sector is encouraged to develop checklists on its own, being careful to consult the other sectors.
- ii. Without departing from local control, we see merit in national organizations (such as the National Judicial Institute, the CBA, and other organizations representing the Bar, including organizations of defence counsel and Crown Attorneys'), developing model checklists as a means of articulating best practices and validating key sector responsibilities for case management.

b. Identification and Use of Key Indicators

- i. The Committee should identify key indicators - information each sector requires to monitor the flow of the mass of cases and the progress of each case against the stated expectations.
- ii. The indicators should be reported regularly, in an understandable format, and should not be so excessive in number or detail as to overwhelm the user or producer. The purpose of key indicators is to call attention to possible problems so further analysis can take place.
- iii. Selection of key indicators is also a local matter since conditions vary widely between jurisdictions but should include
 - The number of cases in the system,
 - The number of appearances per case,
 - If possible, the intended purpose of each appearance and whether an appearance achieved its intended purpose,
 - "Backlog" or next available dates.
- iv. The key indicator report should be a publicly available document.
- v. Ideally, the key indicator report should be specific to court location in the interests of transparency and accountability, and so remedial action, such as resource deployment, can be taken quickly. However, initially it may be necessary to blend information, at least in the publicly available report, in order to ease the transition to a case management culture.

4. Further consideration should be given to streamlining the process provided in the *Criminal Code* for creating case management systems:

- a. Consideration should be given to amending s. 482 of the *Criminal Code* to facilitate local rule making. We doubt the requirement of publication in the Canada Gazette is worth the time it consumes and we see the procedural distinction between rules made by superior courts and provincial courts as archaic.