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LEGISLATIVE SUMMARY

Bill C-2:
Fair and Efficient Criminal Trials Act

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Legislative Summary of Bill C-2

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Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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LEGISLATIVE SUMMARY OF BILL C-2: FAIR AND EFFICIENT CRIMINAL TRIALS ACT

1 BACKGROUND

Bill C-2, An Act to amend the Criminal Code (mega-trials) (short title: Fair and Efficient Criminal Trials Act), was introduced and received first reading in the House of Commons on 13 June 2011. It is virtually identical to Bill C-53, which was introduced and received first reading in the House of Commons on 2 November 2010. That bill died on the *Order Paper* when the 40th Parliament was dissolved on 26 March 2011.

The bill amends the *Criminal Code*[1] to allow for the appointment of a case management judge and defines the role and powers of such a judge. It streamlines the use of direct indictments preferred under section 577 of the *Criminal Code* and allows for delayed severance orders.[2] The bill amends the provisions for the protection of the identity of jurors and increases the maximum number of jurors who can hear the evidence on the merits. Finally, the bill provides that, in the case of a mistrial, certain decisions made during the trial are binding on the parties in any new trial.

1.1 THE NATURE OF THE PROBLEM

The news release accompanying Bill C-2 states that so-called “mega-trials” often involve a large amount of complex evidence, numerous charges against multiple accused, and the need to call many witnesses. This can take up a lot of court time and generate excessive delays, which, in turn, can increase the risk of mistrials.[3] The concept of mega-trials is not limited to jury trials; the trial of the accused in the 1985 bombing of Air India Flight 182 is a good example.

Mega-trials deal with serious offences such as organized crime, gang-related activity and terrorism. The trend to lengthier trials has been attributed to more expansive and complex evidence, increased use of expert testimony, more aggressive courtroom conduct and the proliferation of preliminary applications involving the admissibility of evidence, disclosure or Charter of Rights challenges.[4]

The first mega-trial in Canada, sometimes referred to as the “Dredging conspiracy,” was heard in the Ontario courts during the late 1970s.[5] In that case, 20 personal and corporate defendants were charged in a seven-count conspiracy indictment arising out of an alleged bid-rigging scheme extending over a period of eight years. The trial lasted 197 court days spanning a period of 15 months. At the conclusion of the evidence, defence counsel addressed the jury for seven days, the Crown address extended over 11 days, the charge to the jury lasted seven days, objections to the charge lasted 11 days, and the jury deliberated for 14 days. The 20 accused were charged with a total of 53 offences. The jury brought in 40 guilty verdicts against 13 of the accused. It found various accused not guilty of nine offences and was unable to reach a verdict on four counts. In a unanimous 320-page judgment, the Ontario

Court of Appeal affirmed the jury's verdict on all but seven counts, for which it ordered new trials. That decision was affirmed by the Supreme Court of Canada four years later.

A research study prepared in connection with the final report into the bombing of Air India Flight 182 observes that the length of a mega-trial seems directly proportional to the risk of not reaching a verdict at all: the presiding judge, jurors, and witnesses may die or become ill; formerly cooperating co-conspirators scheduled to testify for the Crown may disappear or withdraw their cooperation. In addition, defence witnesses may move away and become unreachable. Furthermore, it may be unreasonable for the state to ask jurors to give up a year or more of their lives to a single case. It is in the interests of justice that a trial be fair and manageable, and within the comprehension of a lay jury.[6]

A court decision released on 31 May 2011 illustrates the difficulties that "mega-trials" can cause for the justice system. On 15 April 2009, a police operation called Operation SharQC had resulted in the arrest of 155 people. In the case of *Auclair* c. *R.*,[7] a Quebec Superior Court judge ordered the release of 31 of those arrested on the grounds that their trials would be inordinately delayed. The judge criticized prosecutors for going ahead with such a large mega-trial without ensuring that the justice system could handle it efficiently, and he warned that the same thing might happen to other mega-trials in the future.

1.2 The LeSage-Code Report

In November 2008, the Ontario Ministry of the Attorney General released the *Report of the Review of Large and Complex Criminal Case Procedures*.[8] This report, written by the Honourable Patrick LeSage and Professor Michael Code, was published in response to a request from the Attorney General of Ontario to "identify issues and recommend solutions to move large, complex cases through the justice system faster and more effectively."[9] The authors prepared the report following discussions with defence and Crown counsel, the judiciary, Legal Aid Ontario, police agencies, and others involved in large, complex criminal cases.

The LeSage-Code Report identifies three major events that played a significant role in transforming the modern criminal trial from a short, efficient examination of guilt or innocence to a long and complex process. These three events were the passage of the *Canadian Charter of Rights and Freedoms*, the reform of evidence law by the Supreme Court of Canada, and the addition of many new complex statutory provisions to the *Criminal Code* and related statutes.

The first event was the constitutionalization of criminal law and criminal procedure in 1982 with the adoption of the *Canadian Charter of Rights and Freedoms*. Sections 7 to 14 of the Charter can be seen as a constitutional code of criminal procedure. These sections are called "Legal Rights" and they set out rights such as being secure from unreasonable search or seizure and the right to legal counsel upon arrest. The adoption of these legal rights led to a broad range of procedural motions that had not previously existed, in order to enforce the rights and remedies now entrenched in the Charter. These motions can be complex and take additional time to hear and resolve.

The second event found to have contributed to long, complex trials was the Supreme Court of Canada's decision to reform the law of evidence. Under the previous common law system, the admissibility of evidence was guided by certain rules. The changes to this system broadened the scope of admissibility of evidence by changing to a more flexible one based on broad principles as to what would be "fair" or "just" in the circumstances. Some examples of these changes include the admissibility of more hearsay,[10] the admissibility of more confessions,[11] and new exceptions and types of privilege.[12] The new, principled approach was less rules-based and, as a result, it became very hard to predict the likely result of a motion on these issues. A great deal of evidence, therefore, is provided to a judge prior to any decision on an evidentiary motion because the factors that can be applied are so uncertain and so case-specific.

The third event that contributed to long, complex trials was the large amount of statutory amendments, such as to the *Criminal Code*, which is about double the size it was 30 years ago. The new legislation is complex, unfamiliar and untested and so it, too, has led to lengthy new proceedings. One example of new legislation is that related to "criminal organizations." The new offences in sections 467.11, 467.12 and 467.13 of the *Criminal Code* enact an aggravated form of already-existing offences. These offences have become a major feature of the gang-related mega-trial and they require considerable additional time to prove the additional aggravating "criminal organization" element, which can then result in a lengthy consecutive sentence. For example, in one of the leading "criminal organization" cases, the underlying offence of extortion was proved in one week while the "criminal organization" aspect of the trial (in this case concerning the Hells Angels) took six weeks.[13]

Having set out its understanding of the basis for long, complex trials, the LeSage-Code Report then made many recommendations to ameliorate the situation. Bill C-2 addresses some (though not all) of these recommendations. One example is the recommendation that, where the trial judge cannot be assigned at an early stage, a "pre-trial case management judge" be given the power to make rulings on pre-trial issues. The kinds of motions that would benefit from early rulings, in advance of the trial, should, according to LeSage and Code, be in the discretion of the court. Early rulings may allow the parties to prepare properly for trial, prevent adjournments of the trial, encourage resolution of the case prior to trial, or eliminate the need for a trial. The Lesage-Code Report also recommended that the *Criminal Code* be amended to make it clear that any rulings at a first trial that ends in severance, or in a mistrial, remain binding at a subsequent trial, in the absence of some material change.

1.3 Reports of the Steering Committee on Justice Efficiencies and Access to the Justice System

At a 2003 meeting of Federal/Provincial/Territorial Ministers Responsible for Justice (the "F/P/T Ministers"), the creation of a Steering Committee on Justice Efficiencies and Access to the Justice System (the "Steering Committee") was endorsed. This Committee began to search for practical and lasting solutions to improve the conduct of mega-trials. In January 2005, the Steering Committee's final report on mega-trials[14] was considered by the F/P/T Ministers. After discussion, the Ministers agreed

with the recommendations from the Steering Committee and referred the report to Justice Canada for the detailed policy work necessary to move the initiative forward and for further consultations.

A key recommendation of the Steering Committee's report is that, once a mega-trial has been declared as such by a chief judge, he or she then refers the file to the "case management judge." The trial is considered to have started when the case management judge begins his or her work. This judge has all the powers of a trial judge and rules on preliminary matters, such as evidentiary issues, to ensure that the presentation of evidence at trial will not be interrupted by the need to rule on latent issues. Along with ruling on the admissibility of evidence and Charter questions, the case management judge would also consider issues of disclosure, rule on bail matters, rule on applications for severance, invite the parties to identify the issues, and put admissions made by the parties in the file.

The Steering Committee also suggested that a way to limit the risk of inconsistent rulings would be to have all preliminary motions involving the same evidence in separate but related files joined and heard at the same hearing. Thus, a challenge to the validity of a search warrant that allowed evidence for several distinct files could be gathered into one hearing. The decision rendered would be considered binding in all trials involving the parties who participated in the hearing. It could not be revisited by trial judges.

The Steering Committee also realized that, because of the length of mega-trials, there is a higher risk that the number of jurors will drop below the limit of 10 allowed by the *Criminal Code*.[15] It rejected recommendations from other bodies that alternate jurors be appointed for the duration of the trial. It did recommend that there be a specific and in-depth examination of the issue of reducing the minimum number of jurors to nine or eight to obtain a valid unanimous verdict, in particular as regards potential constitutional implications.

Finally, the Steering Committee recommended that the court be able to amend a defective direct indictment, pursuant to section 601 of the *Criminal Code*. In these circumstances, the Crown should not be required to obtain and file a new direct indictment. Section 601 allows the court to, among other things, amend an indictment where it fails to state, or states defectively, anything that is requisite to constitute the offence or where it is in any way defective in form.

The Steering Committee has also presented a report on jury reform.[16] Its proposals on the safety of jurors related mainly to the protection of their anonymity. The Steering Committee recommended that the advisability of systematically restricting access to information about jurors in all trials should be studied. One proposal was to call prospective jurors only by their number, not by name. The Committee thought that concerns that a prospective juror may have ties to one of the parties, not live in the judicial district of the offence, be biased because of his or her profession or occupation or not be the person whose name appears on the panel could be addressed by asking general questions rather than by requiring the disclosure of specific information to the parties (name, address, occupation, etc.). Another proposal was to facilitate, by an amendment to the *Criminal Code*, the obtaining of orders banning publication and broadcast of information that could serve to identify a juror.

2 DESCRIPTION AND ANALYSIS

Bill C-2 contains 17 clauses. The following description highlights selected aspects of the bill; it does not review every clause.

2.1 DIRECT INDICTMENTS (CLAUSES 2 AND 6)

Direct indictments are permitted by section 577 of the *Criminal Code*. This section allows the Attorney General or the Deputy Attorney General to send a case directly to trial without a preliminary inquiry or after an accused has been discharged at a preliminary inquiry. The *Federal Prosecution Service Deskbook* states that the controlling factor in all cases is whether the public interest requires a departure from the usual procedure of indictment following an order to stand trial made at a preliminary inquiry. The Deskbook goes on to state that the public interest may require a direct indictment in circumstances that include the following:

- where the accused is discharged at a preliminary inquiry because of an error of law, jurisdictional error, or palpable error on the facts of the case;
- where the accused is discharged at a preliminary inquiry and new evidence is later discovered which, if it had been tendered at the preliminary inquiry, would likely have resulted in an order to stand trial;
- where the accused is ordered to stand trial on the offence charged and new evidence is later obtained that justifies trying the accused on a different or more serious offence for which no preliminary inquiry has been held;
- where significant delay in bringing the matter to trial resulting, for instance, from persistent collateral attacks on the pre-trial proceedings, has led to the conclusion that the right to trial within a reasonable time guaranteed by section 11(b) of the Charter of Rights and Freedoms may not be met unless the case is brought to trial forthwith;
- where there is a reasonable basis to believe that the lives, safety or security of witnesses or their families may be in peril, and the potential for interference with them can be reduced significantly by bringing the case directly to trial without a preliminary inquiry;
- where proceedings against the accused ought to be expedited to ensure public confidence in the administration of justice – for example, where the determination of the accused's innocence or guilt is of particular public importance;
- where a direct indictment is necessary to avoid multiple proceedings – for example, where one accused has been ordered to stand trial following a preliminary inquiry, and a second accused charged with the same offence has just been arrested or extradited to Canada on the offence;
- where the age, health or other circumstances relating to witnesses requires their evidence to be presented before the trial court as soon as possible; and
- where the holding of a preliminary inquiry would unreasonably tax the resources of the prosecution, the investigative agency or the court.[17]

Section 523 of the *Criminal Code* describes the periods of time for which various specified forms of release continue to be in force. An appearance notice, promise to appear, summons, undertaking or recognizance remains in force until the completion

of the accused's trial and until sentencing has been completed, unless the judge orders that the accused be detained prior to the imposition of sentence. When an accused is at liberty on a form of release and a new charge is laid, either for the same or for an included offence, the original form of release continues to apply.

Clause 2 of Bill C-2 adds a new subsection to section 523 to extend the continuation of bail or other forms of release to direct indictment situations. This new subsection provides that a new bail hearing will no longer have to be held when an accused is subject to a bail or detention order for an offence and a direct indictment is preferred charging the accused with the same offence or an included offence.

Section 601 of the *Criminal Code* governs applications to quash or amend an indictment. At any stage of the proceedings, a court can amend an indictment which, although otherwise properly drawn, refers to the wrong statute or is in any way defective in form. In addition, where evidence has been called, the court can amend the indictment to conform with the evidence. Currently, this power of the court to amend an indictment refers only to regular indictments or those that are made following a preliminary inquiry that shows there is sufficient evidence to justify holding a trial; if a direct indictment contains a technical error, a new direct indictment must be preferred, which involves the personal written consent of the Attorney General or Deputy Attorney General. Clause 6 of the bill amends section 601 of the *Criminal Code* to empower the court to amend technical defects in direct indictments, as is the current practice in the case of regular indictments.

2.2 Case Management Judge (Clause 4)

Currently, section 645 of the *Criminal Code* indicates that the trial of an accused shall proceed continuously, subject to adjournment by the court. This section also allows a judge, before the jury is empanelled, to deal with questions that would ordinarily be dealt with in the absence of the jury. This is intended to facilitate the calling of evidence on the merits in a more orderly and continuous manner, as the jury will not have to be excused to enable such matters to be decided. The common law has interpreted this section of the Code as meaning that, once a judge has jurisdiction to make evidentiary rulings, he or she then has the jurisdiction to hear the trial itself.[18] It has also been held that the judge conducting an evidentiary hearing under section 645 should hear the trial because of the principle that rulings by one judge do not bind another judge who may later deal with the same matter.[19]

Clause 4 of Bill C-2 adds Part XVIII.1 to the *Criminal Code*, entitled "Case Management Judge." This new part of the Code will empower a case management judge to rule upon preliminary issues. The goal of this provision is to allow earlier resolution of the preliminary issues upon which the remainder of the trial often rests. It is also intended to permit the presentation of evidence to the trier of fact to proceed without interruption, to the greatest extent possible, thereby reducing the overall duration of proceedings.

There are a number of ways in which a case management judge will be appointed, including by application by the prosecutor or the accused or by a motion by the Chief Justice or the judge he or she has designated. The decision to appoint a case management judge will be based on an opinion that it is necessary for the proper

administration of justice. The appointment is to be made at any time before jury selection or, if it is a judge-alone trial, before the stage at which the evidence on the merits is presented. The appointment of a judge as the case management judge does not prevent him or her from becoming the judge who hears the evidence on the merits.

When appointed, the case management judge may exercise the powers that a trial judge has before the presentation of the evidence on the merits. These powers include:

- assisting the parties to identify the witnesses to be heard;
- encouraging the parties to make admissions and reach agreements;
- establishing schedules and imposing deadlines on the parties;
- hearing guilty pleas and imposing sentences;
- assisting the parties to identify the issues that are to be dealt with at the presentation of evidence stage;
- adjudicating any issues that can be decided before the evidence stage, including those related to the disclosure and admissibility of evidence, the *Canadian Charter of Rights and Freedoms*, expert witnesses, the severance of counts, and the separation of trials on one or more counts where there is more than one accused; and
- encouraging the parties to consider any other matters that would promote a fair and efficient trial.

The overall goal of a case management judge is to assist in promoting a fair and efficient trial by ensuring that the evidence on the merits is presented, to the greatest extent possible, without interruption. Once measures to this effect have been completed, the case management judge will ensure that the court record includes information such as any admissions made and agreements reached by the parties and the estimated time required to conclude the trial. The trial of an accused shall proceed continuously, as currently stated in section 645 of the *Criminal Code*, even if the judge who hears the evidence on the merits is not the same as the case management judge. In addition, the case management judge can go on to adjudicate upon any issue referred by the judge presiding over the presentation of the evidence on the merits. Furthermore, he or she could preside over the remainder of the trial with or without a jury, during the presentation of evidence on the merits.

New section 551.7 of the *Criminal Code* addresses the matter of preliminary issues that need to be adjudicated in related trials. In large complex cases, many of the preliminary issues involving similar evidence can be common to a number of cases. This new provision allows for a joint hearing of preliminary motions involving similar evidence that arise in related but separate trials. When the judge appointed to hear the preliminary matters adjudicates the issues, he or she is doing so at trial. The judge’s decision will be included in the court record of each of the related trials in respect of which the joint hearing was held.

2.3 Delayed Enforcement of Severance Orders (Clause 5)

Section 591 of the *Criminal Code* deals with indictments where there is more than one count or more than one accused, and the power of the court to order separate trials. Aside from an indictment alleging murder,[20] any number of counts for any number of offences may be included in an indictment. If the interests of justice require it, a court can make a severance order. Such an order means that certain counts and/or accused will be tried separately. A severance order may be made before or during the trial. Where it is made during a trial, the jury will be discharged from giving a verdict on the counts on which the trial does not proceed or in respect of the accused who has been granted a separate trial. New proceedings regarding these counts or defendants will then proceed as if there were a separate indictment. This means that, where there is an order of severance of counts or separate trials for certain co-accused prior to the adjudication of the preliminary issues, the evidence must be presented in each of the resulting trials in support of these preliminary issues.

Bill C-2 adds two subsections to section 591. These subsections allow a court to delay the enforcement of a severance order, thereby allowing a preliminary issue pertaining to more than one accused or count to be adjudicated by one judge only, prior to the severance. The intention behind delaying the enforcement of a severance order is to ensure consistent decisions, along with preventing unnecessary duplication. The new provisions also make it clear that decisions relating to the disclosure or admissibility of evidence or to the *Canadian Charter of Rights and Freedoms* that are made before a severance order comes into effect continue to bind the parties in severed trials if the decisions are, or could have been, made before the stage at which evidence on the merits is presented.

2.4 Rulings at Mistrials (Clause 14)

Section 653 of the *Criminal Code* deals with the situation where the trial judge is of the opinion that the jurors are unable to reach a unanimous verdict. In the case of a “hung” jury, the trial judge can declare a mistrial and discharge the jury or, in the alternative, adjourn the trial. Where there is a mistrial, there will be a new trial. The judicial discretion to declare a mistrial is not subject to appeal.

Clause 14 of Bill C-2 adds section 653.1 to the *Criminal Code* to provide that, in the case of a mistrial, decisions on certain preliminary issues continue to bind the parties, unless the court is satisfied that this would not be in the interests of justice. The rulings that will continue to bind the parties are those relating to disclosure or admissibility of evidence or the *Canadian Charter of Rights and Freedoms* that were made, or could have been made, before the stage at which the evidence on the merits is presented. These are the same preliminary issue rulings that will continue to bind the parties in the case of a delayed severance order, addressed in clause 5 of the bill.

2.5 Measures Concerning Jurors (Clauses 7 to 13)

Section 631 of the *Criminal Code* sets out the general procedure followed in empanelling a jury. Each juror's name, panel number and address will be on a card in a box. The cards are then drawn in open court and the rule requires the clerk to call out the name and number of each juror. Subsections 631(3.1) and 631(6) of the *Criminal Code* set out exceptions for the purpose of preserving the anonymity of jurors. These subsections allow the judge to order that only the number of the juror be called and prohibit publication, broadcast or transmission in any way of the juror's identity where necessary for the proper administration of justice. Section 631 of the Code also permits the judge to have up to two alternate jurors selected.

Bill C-2 amends section 631 to allow for the swearing of up to 14 jurors. The amendment is in response to the increasing amount of time required to hear criminal trials, especially in the case of mega-trials. This can affect the jury's ability to render a verdict, since it is not uncommon, especially during lengthy trials, for jurors to be discharged in the course of the trial. Such discharges can result in the size of the jury being reduced to below the *Criminal Code* minimum requirement of 10 jurors to render a valid verdict. It may be that there are more than 12 jurors remaining when it comes time to consider the verdict. In such a case, there will be a random selection process that will determine, after the judge's charge to the jury, which jurors will deliberate.

Another amendment concerning juries will provide that jurors be systematically called in court by their number and that the use of names be the exception. Furthermore, the court would be able to limit access to juror cards or lists when deemed necessary for the proper administration of justice. This is intended to improve the protection of jurors' identity and enable them to perform their duties without fear of intimidation or physical injury.

NOTES

1. *Criminal Code*, R.S.C., 1985, c. C-46.
2. Direct indictments are permitted by section 577 of the *Criminal Code*. This section allows the Attorney General or the Deputy Attorney General to send a case directly to trial without a preliminary inquiry or after an accused has been discharged at a preliminary inquiry. The controlling factor in all instances is whether the public interest requires a departure from the usual procedure of indictment following an order to stand trial made at a preliminary inquiry. Severance is dealt with in section 591 of the *Criminal Code*. Indictments may have more than one count or more than one accused and courts have the power to order separate trials. If the interests of justice require it, a court can make a severance order. Such an order means that certain counts and/or accused will be tried separately. Currently, where a judge orders the severance of counts or separate trials for certain co-accused prior to the adjudication of the preliminary issues, the evidence must be presented in each of the resulting trials in support of these preliminary issues.
3. Department of Justice, "Government of Canada re-introduces "mega-trial" legislation to help make streets and communities safer," News release, 13 June 2011.
4. Janice Tibbetts, "New rules aim to speed up mega-trials," *Times Colonist* [Victoria], 2 November 2010, p. A8.

5. *R.* v. *McNamara* (No. 1) (1981), 56 C.C.C. (2d) 193 (Ont. C.A.), [1981] O.J. No. 3254; affirmed *Canadian Dredge & Dock Co.* v. *The Queen*, [1985] 1 S.C.R. 662, [1985] S.C.J. No. 28.

6. Bruce A. MacFarlane, "Structural Aspects of Terrorist Mega-Trials: A Comparative Analysis," in *Research Studies – Volume 3: Terrorism Prosecution*, published by the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, 2010, pp. 151–309 (p. 211).

7. *Auclair* c. *R.*, 2011 QCCS 2661.

8. See Patrick J. LeSage and Michael Code, *Report of the Review of Large and Complex Criminal Case Procedures*, Ontario Ministry of the Attorney General, Toronto, November 2008.

9. Ontario, Ministry of the Attorney General, "Attorney General Launches Complex Criminal Case Procedure Review," News release, 25 February 2008.

10. *R.* v. *Khan* (1990), 59 C.C.C. (3d) 92 (S.C.C.).

11. *R.* v. *Singh* (2007), 225 C.C.C. (3d) 103 (S.C.C.).

12. *R.* v. *Brown* (2002), 162 C.C.C. (3d) 257 (S.C.C.).

13. *R.* v. *Lindsay and Bonner* (2004), 182 C.C.C. (3d) 301 (Ont. S.C.J.).

14. Steering Committee on Justice Efficiencies and Access to the Justice System, *Final Report on Mega-trials of the Steering Committee on Justice Efficiencies and Access to the Criminal Justice System*, Department of Justice, January 2005.

15. *Criminal Code*, subsection 644(2).

16. Steering Committee on Justice Efficiencies and Access to the Justice System, *Report on Jury Reform*, Department of Justice, May 2009.

17. *Federal Prosecution Service Deskbook*, Part V, "Proceedings at Trial and on Appeal," Chapter 17, "Direct Indictments," Department of Justice, 2004.

18. *R.* v. *Curtis* (1991), 66 C.C.C. (3d) 156 (Ont. Ct. (Gen. Div.)), [1991] O.J. No. 1070.

19. *Duhamel* v. *The Queen*, [1984] 2 S.C.R. 555, 15 C.C.C. (3d) 491. In this case, the Supreme Court of Canada ruled: "This appears to me to say that it is for the trial Judge to determine admissibility on the evidence before him and he is not bound by the interlocutory rulings made at an earlier trial even though the statement is the same" (Lamer J.).

20. Section 589 of the *Criminal Code* states that no count charging murder shall be joined with any count charging an offence other than murder, unless the other offence arises out of the same transaction or the accused consents.