A Statistical Snapshot of the Criminal Justice System

The Canadian Centre for Justice Statistics has produced another of its helpful reports: *Adult Criminal Court Statistics for 2002/03*, published as 23(10) Juristat. The report's findings of increasing caseloads and the increasing time it takes to dispose of cases made headlines, raising concerns about the possibility of another *Askov* ([1990] 2 S.C.R. 1199) crisis of cases being stayed because of unreasonable and unjustified delay.

If it is applied rigorously by the courts, *Askov* is a real concern in the 14% of cases that take more than a year to process. These concerns explain why some jurisdictions such as Ontario plan to appoint more prosecutors and judges to process more cases. There is work to keep the new appointees and others in the system busy. For example, the mean number of appearances in cases has risen from 4.1 in 1994/1995 to 5.7 in 2002/03. But is this work necessary work or busywork?

The main customers of the criminal courts are young males, who are most frequently charged with offences such as impaired driving (12% of all offences), common assault (11%), theft (9%) and system-related offences such as failing to obey a court order (8%) and breach of probation (6%). The harms of some of these offences cannot be denied, but it is far from clear whether we have discovered the best means of dealing with young males who break the law.

Females are the accused in 15% of cases, most frequently charged with prostitution-related offences, fraud and theft. Some of these cases might turn out to be unnecessary if the government rethought the criminalization of prostitution in the same manner as the proposed decriminalization of marijuana. Reduction of poverty levels might also affect the high female participation in property crimes.

Only 1% of cases involve a corporate accused. This may strike many as too low, and this figure may increase under the brand new amendments designed to make criminal prosecutions of corporations easier. Nevertheless,
it remains unclear whether criminal prosecutions are the optimal means to respond to the harms of corporate wrongdoing.

Accused often face multiple charges and one third of cases are resolved by being stayed, withdrawn or dismissed by the Crown. In Ontario, 43% of cases are resolved in this manner whereas in Quebec, where the Crown pre-screens charges, only 10% of cases are resolved this way. This suggests that greater efficiencies and higher conviction rates (a 74% conviction rate in Quebec compared to Ontario's rate of 54%) might be achieved by pre-charge screening.

The due process idea of the criminal courts acquitting the accused or stopping the prosecution because of Charter concerns is something of an illusion. Only 3% of all cases result in acquittals and another 3% result in other forms of court termination. Prosecutors drop charges far more frequently than judges dismiss them.

Sentencing patterns also suggest that the criminal courts deal with many less serious cases. Only 35% of all cases result in prison with 55% of these custodial sentences being for one month or less and only 13% being for more than six months. The debatable notion of the short sharp shock of a prison sentence may be at work here. Probation (46% of cases) and conditional or absolute discharges and suspended sentences (21%) are still used much more than conditional sentences (5% of cases), suggesting that fears that the more intrusive conditional sentence would widen the net and replace other alternatives to imprisonment may not have been realized. Although the use of fines is decreasing, they still are used in many more cases (33% of all cases) than restitution (4% of cases), even though the latter arguably accords more with the restorative purposes of sentencing.

The use of imprisonment also does not fit into admittedly intuitive and crude concepts of proportionality because a person is more likely to go to jail for administration of justice offences (52% of cases) and property offences (40%) than crimes against the person (36% of cases). Once simple assaults are taken out of the equation, the picture is different, but people still go to jail more frequently for system-based than violent offences.

What should we make of this statistical snapshot of our criminal courts? Concerns about delay cannot be dismissed, but the real problem may be the large number of minor charges that are produced by the system and clog it up. Such minor charges, when not withdrawn by the Crown, generally result in probation, discharges or very short prison sentences. We can continue to appoint more prosecutors and judges and they will not run out of work. Nevertheless problems of delay and inefficiency may persist unless we rethink our use of the criminal sanction in a more fundamental fashion.

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