

The Duty to Disclose

The Challenges, Costs and Possible Solutions: Final Report

EXECUTIVE SUMMARY



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September 2014

Prepared for:
Saskatchewan Ministry of Justice: Corrections and Policing

Saskatchewan Association of Chiefs of Police

Jones, N.A., Ruddell, R., Leyton-Brown, K., Michaels, S. (2014). *The Duty to Disclose The Challenges, Costs and Possible Solutions: Final Report*. Regina, SK. Collaborative Centre for Justice and Safety.

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ACKNOWLEDGEMENTS

The researcher would like to acknowledge the efforts and contributions made by groups and individuals involved in the process of completing this research. First, the research was funded by a grant from the Saskatchewan Ministry of Justice: Corrections and Policing. The Ministry's engagement in seeking research to provide for evidence-based decision-making is commendable and noteworthy. Secondly, the members of the initial steering committee were essential to this project in providing their expertise in the development of the project and most importantly in assisting as gatekeepers, providing the researcher with access and contact information leading to the discovery and participation of potential research participants. The researcher also wants to acknowledge the invaluable contributions of the research participants in Saskatchewan as well as outside the province. Their willingness to volunteer their time and considerable expertise to this research cannot be understated. Finally, the researchers express their gratitude to the individuals involved in the Collaborative Centre for Justice and Safety at the University of Regina for their support over the course of this project.¹

¹ This report does not represent the views of the Saskatchewan Ministry of Justice or the Saskatchewan association of Chiefs of Police.

I. EXECUTIVE SUMMARY

Background and Study Objectives

In recent years, there has been a growing interest in holding public safety services such as the police more accountable for their performance as publically funded agencies (Ruddell & Jones, 2014). As a result, there has been a determined and focused search for cost efficiencies within the criminal justice system. One area where there has been an increase in workload and costs is due to legal requirements associated with pre-trial disclosure. While Cowper (2012) noted that the disclosure ruling in the Supreme Court's *R. v. Stinchcombe* (1991) decision was predicted to result in an increased number of pre-court resolutions, which has not always been the case. Malm, Pollard, Brantingham, Tinsley, Plecas, Brantingham, Cohen and Kinney (2005, p. 13) reported that disclosure requirements have, in some cases, had a "debilitating, effect on police resources." Given the inter-related nature of the justice system, it is not difficult to see how this costly requirement also impacts upon the operations and budgets of Public Prosecutor Units as well. The *Stinchcombe* decision has resulted in justice agencies having to balance the requirements of the court ruling to ensure just and fair outcomes for the accused, while seeking strategies to ameliorate the increased workload they have experienced.

The purpose of this report was to shed light on the practice of disclosure in Saskatchewan using information collected from justice-system practitioners and stakeholders, as well as practitioners from other provinces. Based on an analysis of their observations, four broad recommendations were generated that incorporated suggestions from the Saskatchewan participants, while also giving consideration to best practices reported by officials from other provinces who are grappling with similar issues. These recommendations fall under the broad themes of: 1) legal issues and requirements, 2) standardization of disclosure packages, 3) electronic forms of disclosure, and 4) transcription.

Method

This study employed a variety of research methods in order to increase our understanding of disclosure issues within and outside Saskatchewan. After a comprehensive literature review was carried out, a series of thirty-seven semi-structured interviews was conducted. Twenty-nine face-to-face interviews with police personnel, Crown prosecutors, defence counsel and one judge were conducted in Saskatchewan. An additional eight participants from British Columbia,

Alberta, Manitoba, Ontario, and Nova Scotia, representing their respective Ministries of Justice, Prosecution branches, and police services were also interviewed. Attride-Stirling's (2001) thematic network analysis was used to analyze the transcribed interviews.

In addition to the interviews, a "transcription form," that was intended to identify the processes and costs associated with transcription was provided to a number of Saskatchewan police services and this yielded responses from five agencies. Finally, a review of web-based documents found on provincial government websites from across the country was conducted. This component of the research used qualitative content analysis to identify the different disclosure practices.

Limitations

There are some limitations associated with the research. The interview component of the research was limited in several ways: 1) although Crown and police personnel were sampled from each prosecutorial region in the province, only one region had defence counsel representation; 2) travel budgets and schedules did not permit the researcher to obtain interviews with all of the potential participants; 3) participation from outside of the province was limited in its scope (i.e. no defence counsel outside of Saskatchewan were interviewed); 4) some police services/prosecutor offices were over-sampled due to participant availability and their desire to participate; and 5) while judicial participation was sought, only one retired judge responded as it was suggested that it was inappropriate for the judiciary to comment given their roles as adjudicators of disclosure issues. In addition, the "transcript cost" component of the research was limited by the lack of consistent methods of recording by the police services as to the actual costs of transcription (e.g., these costs are not reported consistently). In addition, no data were collected from either the Crown or defence as to the costs they incurred when transcribing police statements. As such, the cost estimates that are reported for transcriptions are incomplete and only approximate the true costs.

Conclusions

The literature review, content analyses, examination of agency cost estimates and the analyses of the 38 interviews resulted in the identification of four broad themes associated with disclosure: 1) legal issues and requirements, 2) standardization of disclosure packages, 3) electronic disclosure, and 4) transcription. A brief summary of each category is presented below and an expanded list of these recommendations, presented in Table 1, follows those conclusions

(a rationale for these recommendations is provided at the end of the report). The researcher did not take into account the potential financial costs associated with the implementation of these recommendations. Rather, these recommendations were based upon the “best practices” identified by the Saskatchewan participants while also considering practices in other provinces that align with, and/or address, similar disclosure-related issues.

Legal Issues and Requirements

The results of the research were consistent with the literature review surrounding the issues and challenges faced by criminal justice personnel as a result of the landmark cases of *R v. Stinchcombe*, *R. v. McNeil*, and *R v. O'Connor*. While it was consistently reported that the rationale and intentions behind those legal decisions were sound, there were unanticipated outcomes. While some legal scholars observed that there were potential efficiencies that might have arisen from these decisions, the majority of practitioners suggested that the end result was a problematic increase in the workload associated with meeting these legal requirements. The analyses revealed that there was very little variation between any of the provincial jurisdictions with regard to: 1) determinations of relevance, 2) producing complete disclosure packages amidst oftentimes very short timelines, 3) addressing requests for third-party evidentiary records, 4) the potential misuse of disclosure (particularly in the context of increased ease and accessibility of the internet), as well as, 5) the perception that, at least to some degree, disclosure requirements have become a tool for defence that contravenes the intentions behind the duty to disclose. These issues were reported as increasing police and prosecutor workloads. Consistent with the findings from the literature review, it was reported that abiding with the *Stinchcombe* requirements had reduced the capacity of justice personnel to undertake their core functions given the increased administrative requirements.

Of particular relevance to the province of Saskatchewan, it was reported that the practice of Royal Canadian Mounted Police (RCMP) members acting as Crown counsel in a number of rural or remote locations was problematic in terms of disclosure. This practice was not seen as consistent with the notion that the Crown, who bear the ultimate responsibility for disclosure of materials, should be in control of the flow of disclosed materials. Instead, this was seen as undermining full disclosure and potentially costly in terms of processing disclosure requests as well as creating the possibility of negative court decisions by having the police acting in prosecutorial roles. In addition, the time spent by police personnel in the performance of these

additional duties placed a burden on the detachment by reducing the time devoted to core policing functions.

Standardization of Disclosure Packages

The recommendation by participants that disclosure packages should be standardized emerged from a lack of consistency across the province of what materials were provided to the Crown as well as concerns regarding the completeness, quality, and organization of disclosure packages. Participants recognized that moving toward a standardized disclosure package would be costly in terms of changing current operational practices and increasing police workloads in the preparation of these packages. However, it was also suggested that this workload would eventually be reduced once the standardized format became the norm. Standardization would also create efficiencies for police by reducing requests resulting from incomplete disclosure packages. In addition, consistent and better quality packages are predicted to reduce court time allocated to disclosure issues. Lastly, standardized disclosure packages have the potential to increase the number of pre-trial resolutions as well as reducing replication and duplication of efforts.

Standardization has been achieved in other provinces, and according to respondents interviewed in this study, some of the positive results reported above have been achieved. In consideration of standardizing disclosure packages, the findings in the literature review also suggest that standardizing police reporting mechanisms, by incorporating the National Information Exchange Model (NIEM) recommended by the Canadian Association of Chiefs of Police, is a logical outcome of this approach.

Electronic Disclosure

The increased use of technology in society presents justice personnel with a number of challenges with respect to disclosure. Video evidence is frequently collected from a number of public and private sources—including security cameras, smart phones, wiretapping, police recording of statements—and this has the potential to generate unwieldy volumes of electronic evidence. Storing, cataloguing and retrieving this evidence has generated the need to fulfill disclosure requirements using only electronic formats. Electronic disclosure is already a reality to some degree across the country; however, the progress toward fully electronic disclosure has been hampered by a resistance to change from paper copies, outdated or incompatible

information technology structures and capacity, misaligned operational practices within the justice system and financial barriers to adopting new technology.

This research suggests that fully electronic disclosure is inevitable in the future and Canadian case law has typically supported this progression. It was also found that electronic disclosure is positioned to provide some solutions to the previously noted challenges faced in the disclosure process, and in particular, meeting strict time requirements as well as facilitating more effective information sharing. Despite the initial cost burden incurred in introducing electronic disclosure programs and processes, it was suggested that long-term cost-savings, when compared to providing printed disclosure packages, would be realized. In order to fully implement electronic disclosure protocols a systems approach is needed, wherein technological structures and business processes are aligned across all components of the criminal justice system (police, Crown, courts and corrections). As a final note, respondents expressed concern that consideration must be given to the so-called “weakest link,” such that disclosure processes must be workable for all parties, even those with the fewest resources.

Transcription

The findings regarding the transcription of recorded statements taken by the police largely focussed on financial and procedural considerations. Case law as well as the outcomes from the analyses completed for this report makes it evident that the police have met their legal disclosure obligations by providing recorded statements in a useable format (e.g., a tape recording). It would be incredibly rare that the format of the recording (i.e. the software used) would be unusable given the greater consistency and compatibility in formats, especially after the police have distributed software to all end users accessing these recordings. Nevertheless, the use of transcripts was recognized as an important tool for use in court given the pitfalls and cumbersome nature of the electronic mediums.

The processes for producing transcripts as well as the determination regarding who bears the financial burden for their production vary across the country. Some jurisdictions require the police to produce and pay for transcription, others place the burden with the Crown, and in another, it is a shared responsibility. The production of transcripts also varies depending on the responsibility mandated by different provinces; transcripts are completed: 1) “in-house” by police and/or civilian personnel within police services, 2) within a centralized transcription unit as well as 3) contracted out to third-party vendors. As a possible mediating solution, voice-to-

text software was being used by police personnel, but due to software capabilities was only used to transcribe officer notes. Altogether, the burden of transcription costs differs throughout the country and there is no common approach.

II. CONCLUSIONS AND RECOMMENDATIONS

This research was undertaken to explore the challenges faced by actors in the criminal justice system with respect to disclosure in criminal cases, leading to recommendations based on what is currently going on inside Saskatchewan as well as in other provincial jurisdictions. The conclusions that follow bring together the various elements of this research into a coherent whole. As the primary research method employed in this study involved semi-structured interviews, the recommendations are presented in a similar order as they appeared within the presentation of the organizing themes derived from the interview research components of this report. They primarily focus on the suggestions put forward by participants in Saskatchewan, while taking into account and integrating the experiences of other provincial jurisdictions.

The literature review suggested a number of issues arising from disclosure responsibilities as a result of two primary sources: case law and technological advances. Each of these factors has led to the police, Crown, defence and courts experiencing significant challenges requiring them to, in some cases, radically alter their business practices in meeting the arising demands placed upon them. The analysis of the interview data suggests that these challenges are not unique to any provincial jurisdiction. Although not expressed in exactly the same terms, there was consistency in the responses regarding the effects of case law and technology.

Despite being close to a quarter-century old, case law, particularly that arising from the *Stinchcombe*, *McNeil*, and *O'Connor* cases, continues to have an impact on disclosure business practices. The lingering and ongoing effect is largely due to lack of specificity as well as the continuing evolution of case law which makes arriving at completely consistent processes difficult as it remains somewhat of a moving target. Other than the observation by a few participants that perhaps “the pendulum had swung too far” in reference to the perception that defence counsel had manipulated the honourable and just intentions underlying the duty to disclose so that these duties became a legal loophole of sorts for the defence, there were no dissenting views with regard to the case law. No one expressed a desire to “go back” to the pre-

Stinchcombe era, as the reasoning behind the arguments proffered in these cases was deemed sound and just.

Nevertheless, the affect of case law has raised significant challenges for police and crown with respect to their daily operations within the legally prescribed frameworks. The primary issues reported by participants in the interviews (as well as the other components of the research) clearly reflected those identified in the literature review. Some respondents agreed with the suggestions proffered by Martin (1993) and Cowper (2012) wherein the duty to disclose might produce “downstream” efficiency in the criminal justice system associated with an increase in pre-trial resolutions. However, all participants suggested that, congruent with the reports by Malm *et al.* (2005) and the Canadian Association of Chiefs of Police (2011), disclosure requirements have significantly increased the administrative workload associated with disclosure, thereby reducing the time spent on core policing and prosecutorial activities. The most pressing issues noted by participants included: 1) determination of relevance, 2) obtaining third-party records, 3) timing, 4) the creation of disclosure packages, 5) the quality of disclosure packages, and 6) the potential misuse of disclosed materials.

Technological advances over the past number of decades were also reported as having a significant effect on disclosure practices. The effects were noted as being negative in some respects, while also providing the opportunity for solutions to some of the arising issues noted above. The first noted concern surrounded the immense volume of electronic data that is now collected as part of a criminal investigation. In addition, there were reported difficulties in keeping up with, maintaining, and training personnel in concert with rapidly evolving technology. Of particular concern were IT infrastructure limitations (particularly storage, organization, and retrieval of evidence, as well as the continued use of outdated technology), the incompatibility between different technological applications (both within and outside the criminal justice system), potential misuse of disclosed materials via the internet, and the security of electronic files. Nevertheless, electronic disclosure was recognized as the future of disclosure. It addresses the sharing of information in an efficient and timely manner crucial to meeting the legally required time restrictions for disclosure as well as generally providing better access to information within the system.

Transcription of statements taken by police is directly related to technological advancements and legal requirements. Video and/or audio statements have become the

normalized practice in most cases, reportedly to be the case particularly as the severity of the crime increases. However, this practice has resulted in an increase in costs with respect to the production of transcripts. However, it should be noted that one of the limitations of this aspect of the research was that definitive costs could not be provided by many policing agencies. With the exception of the RCMP centralized transcription unit, the tracking of transcription costs is currently ad hoc at best. Even within the RCMP, additional transcription takes place in detachments which is not included in the cost estimate. In addition, changes in police practice, wherein some municipal police services have stopped producing transcripts, affected the available data. Furthermore, this research did not look at the costs incurred by the Crown or defence in the production of transcripts for use in court. Nevertheless, the data collected from the police suggests that transcription does present a formidable expense. A conservative estimate suggests that transcription costs are approximately one million dollars each year.

In 2009, the Saskatchewan government created a committee to explore transcription costs and issues in the province. However, little, if any, progress has been made with respect to formalizing and implementing a province-wide understanding between the police and Crown regarding transcription. Regional disparities in the production of transcripts continue, as does the debate as to who should bear the financial responsibility associated with transcription. The examination of case law, as well as the feedback from participants, suggests that the audio and/or video recorded statements are considered the best evidence in court. There is no legal obligation to provide transcripts (although participants noted that some judges continue to request them). The police have met their disclosure obligations by providing the recorded statement, assuming that the recording is provided in a useable format.

Recommendation 1: Legal Requirements and Issues

The examination of the respective roles of the police and Crown concerning disclosure responsibilities in both the literature review as well as the interview research, led to the first recommendation. One of the issues arising solely in the interviews with Saskatchewan participants was the practice of RCMP members acting in prosecutorial roles in rural and remote locations. The practice was not reported as occurring in any of the other provinces. Although a long-standing convention, this practice is problematic given the Crown's ultimate responsibility for the materials disclosed to the defence. It was reported that having police acting in

prosecutorial roles might lead to problems in properly tracking disclosed materials, as well as meeting the suggested ideal that all requests for disclosure be made through the Crown offices. Furthermore, the police are not necessarily adequately trained in disclosure-related matters to meet the legal requirements of disclosure issues that could negatively affect a given case.

Recommendation 1.1: Crown Counsel Assume Responsibility for Court

It is recommended that Crown Counsel assume the responsibility of providing prosecutorial services in locations currently using police officers.

The respondents recognized the operational difficulties and financial burdens that might arise from this recommendation and provided an alternative for consideration:

Recommendation 1.1a: Explore Expanding the use of Video Court

It is recommended that the Government of Saskatchewan explore expanding the use of video courts across the province.

Respondents suggested that adopting this technology might alleviate some of the burdens associated with requiring prosecutors to conduct all prosecutorial functions as well as provide an added benefit in reducing the costs for the transportation of individuals, both accused and justice officials, to physically attend rural and remote circuit courts. The participants also emphasized the importance of police officers having a basic understanding of the fundamental considerations with respect to disclosure, their role in disclosure and the potential consequences when disclosure is not properly provided.

Recommendation 1.1b: Disclosure Training for Police Officers in Saskatchewan

It is recommended that the Saskatchewan Association of Chiefs of Police ensure that their personnel receive training on disclosure requirements and the effects of incomplete disclosure on the administration of justice.

Recommendation 2: Standardization of Disclosure Packages

In order to address issues regarding a lack of consistency in the provision of disclosure packages from police to the Crown, as well as concerns regarding incomplete or poor quality disclosure packages, participants identified the need for standardization of disclosure packages. In other provinces, the creation of a broadly inclusive committee organized around the guiding

principles outlined previously (e.g., collaborative, problem-solving, pragmatic, engaging front-line personnel) provides the starting point for the standardization of disclosure practices and packages. Of importance to many participants was the need for recognition of differential resource capabilities when engaging in this discussion. The success of a standardized disclosure package was predicated on the ability of the least-resourced agency being able to meet the standard.

Recommendation 2.1: Form a Disclosure Standardization Committee²

It is recommended that the Government of Saskatchewan form a committee to develop a standardized format for disclosure packages.

Ontario has created a 52-file format to provide disclosure materials to the Crown that is consistent in its format as well as consistent with Statistics Canada reporting requirements. This format has been considered by a number of other provincial jurisdictions (e.g., Manitoba).

Recommendation 2.2: Explore Ontario's 52-File Format

It is recommended that the Saskatchewan Ministry of Justice examine the feasibility of using the 52-file format employed in Ontario as a framework for the discussion of standardizing disclosure packages.

Numerous respondents expressed the importance of providing complete and professional disclosure packages in a timely manner, especially given the fiscal constraints of this requirement. Saskatchewan participants suggested that dedicated disclosure personnel from each police service, or alternatively a provincially based unit, could successfully address shortfalls identified in the disclosure process. Furthermore, many participants articulated that civilian personnel be utilized in these endeavours. For example, the province of Alberta employs a dedicated disclosure unit that collects, organizes and prepares disclosure packages, utilizing specially trained civilian staff, that might serve as a model for Saskatchewan.

² There are three recommendations which call for the creation of committees to explore disclosure-related practices: 2.1: Standardization Committee, 3.1: Electronic Disclosure Committee, and 4.2: Transcription Committee. In order to avoid redundancy and duplication of efforts, given that the work of these committees is highly interrelated, a single committee might suffice in addressing all three recommendations. However, subject matter experts (primarily with respect to information technology as it pertains to electronic disclosure) will be required to contribute to area-specific content.

Recommendation 2.3: Create a Centralized Disclosure Unit

It is recommended that the Government of Saskatchewan give consideration to the creation of a centralized disclosure unit housed within the Ministry of Justice.

In the development of a standardized approach to disclosure, it is important to identify the desired outcomes of the proposed process that would enable the proper long-term evaluation of these services. As quality and timeliness of disclosure packages was highlighted as a major concern, timeliness and quality control should be measured following the adoption of any standardized format and/or process.

Recommendation 2.4: Develop a Disclosure Tracking Mechanism

It is recommended that the Government of Saskatchewan create a province-wide tracking system with standardized timeliness and other quality control mechanisms for early disclosure preparations, compliance with disclosure standards, and trial readiness.

The success of implementing a standardized disclosure package and process hinges on the familiarity and understanding of the personnel engaged in the process. Once the standards are created, it is crucial that all those engaged in the process are adequately trained so as to increase consistency across police services and avoid confusion, replication and duplication of efforts.

Recommendation 2.5: Provide Cross-training on the Standardized Package

It is recommended that the Government of Saskatchewan creates and undertakes the necessary steps to ensure training on the standardized format.

Criminal activity is seldom isolated within a single geographic area. Saskatchewan respondents repeatedly identified the benefits of being able to quickly and efficiently share information between police services and prosecution units. One of the keys to sharing information is that it is presented in a consistent manner. Although an issue that was not directly identified by participants, it may be desirable to share information with police services in other provinces, as well as national reporting agencies such as Statistics Canada. As such, the following recommendation is made to reduce the barriers to sharing information within and outside provincial boundaries.

Recommendation 2.6: Standardize Police Data Reporting

It is recommended that the Government of Saskatchewan, in the development of a standardized disclosure package, also consider adopting the National Information Exchange Model (NIEM) as advocated by the Canadian Association of Chiefs of Police.

It was reported that the auditing or vetting of disclosure files was an exceptionally important aspect of disclosure processes in order to protect sensitive information that falls within legally permissible exclusionary guidelines (although these remain open to judicial review upon request from defence counsel). The ideal model for auditing files that emerged from this research was a two-stage process. The inherent familiarity of police with the investigation (e.g., their knowledge of the circumstances and witnesses) positions them exceptionally well to provide the first review with respect to vetting the disclosure files. The Crown, who has the ultimate responsibility for providing disclosure in accordance with the law, can then assess the vetting completed by the police as well as provide the legal expertise necessary to ensure compliance with the law.

Recommendation 2.7: Shared Vetting Responsibilities

It is recommended that, as part of the standardized disclosure package, police vet and mark in the first instance all disclosed materials to the Crown that fall within the legally permissible exclusions for disclosure. The Crown then engages in the final vetting of the materials prior to transmission to the defence or self-represented accused.

Recommendation 3: Electronic Disclosure

The findings in this research align with the review of the literature that suggests that the use of electronic disclosure materials are the way of the future. The sheer volume of electronically collected evidence, as well as the potential efficiencies proposed to arise from the use of electronic disclosure, particularly in the timeliness of providing disclosure as well as the sharing of information within and between provinces, suggests that electronic disclosure is inevitable. It is recommended that the Government of Saskatchewan, in undertaking a review of the criminal justice electronic information systems be forward-looking in the development of electronic disclosure processes and protocols. To this end, subject matter experts in disclosure and information technology should review the current situation and develop a long-term, sustainable approach to electronic disclosure. It would be advisable to invite members of the

judiciary to participate in this exercise, as they are the [arbitrators] of the product. This should not conflict with their independent positioning, as it is not about what is disclosed but rather the manner of disclosure.

Recommendation 3.1: Form an Electronic Disclosure Committee

It is recommended that the Government of Saskatchewan form a committee to further examine, develop and implement the expanded use of electronic disclosure within the province, and that the committee establish guidelines for evaluating the success of these endeavours.

Consistency in reporting systems and easier access to the data collected within the criminal justice system in Saskatchewan was reported as a pressing need that would increase efficiency and ensure justice. In reviewing the changes to be employed in updating the provincial electronic management systems, consideration to align the systems and business practices (police, Crown and corrections) for the creation of a single reference point for information should be given consideration.

Recommendation 3.2: Employ a Systems Approach

It is recommended that the Government of Saskatchewan employ a system-wide approach in the development of electronic disclosure that aligns the business practices and protocols for police services, prosecution units, the court operations and corrections.

The following recommendation arises from a review of the current use of electronic disclosure within Saskatchewan, as well as practices outside of the province. Unlike the situation in British Columbia, where all police services use the same electronic systems, the police in Saskatchewan employ a number of different electronic programs. Participants from Saskatchewan identified that the Public Prosecutions branch has the most pressing need for updating electronic systems. The PRISM system, created in Manitoba (also used in Alberta, and currently under review in Ontario), which has the capacity to receive files from different electronic systems and merge them into a single file appears to present a more manageable approach than requiring each police service to align their systems while still updating the Crown's systems.

Recommendation 3.3: Explore the use of PRISM

It is recommended that the Government of Saskatchewan explore the PRISM disclosure system and processes currently used in Manitoba and Alberta, as a possible mechanism for use in Saskatchewan.

Respondents from across the nation all suggested that some form of internet-based disclosure (as well as other systems, i.e. court-case management) was the most likely future of disclosure. When considering the updating of the criminal justice information management systems, there should be consideration for web-based approaches while weighing the potential security risks associated with such a model.

Recommendation 3.3: Explore the possibility of an Internet-Based Format

It is recommended that the Government of Saskatchewan explore the viability of an internet-based electronic disclosure protocol.

Recommendation 4: Transcription

Despite the previous research and discussion undertaken to address issues related to transcription in the province, no province-wide definitive agreement was reached. Instead, agencies across the province have proceeded on an *ad hoc* basis. For example, the RCMP continues to provide transcripts with disclosure packages, while the provision of transcripts by municipal police services varies. Other provinces employ a variety of models for the production of transcripts establishing protocols and processes as well as clearly articulating where the financial burden lies. In some cases, these were clearly outlined in province-wide memorandums of understanding between the prosecution units and police services.

Recommendation 4.1: Form a Transcription Committee

It is recommended that the Government of Saskatchewan facilitate the formation of a committee to develop a province-wide memorandum of understanding that clearly outlines the various stakeholder roles in the production and distribution of transcripts.

The literature review and the findings that emerged from an analysis of the interviews revealed that a contentious disclosure issue exists surrounding the provision of disclosure in electronic formats that meet the “useable format” requirement as identified in case law. The findings were that the police do fully meet their legal disclosure obligations when providing

Crown prosecutors with a copy of an original video and/or audio statement(s) in a useable format. As a result, this is not a technological issue. In addition, many Crown prosecutors suggested that they too have met their legally prescribed obligations to defence counsel by providing the video and/or audio statement(s), although refusing to provide a written transcript unless they already had one in their possession. It was the consensus of the respondents that while transcripts are a useful tool, they are not legally required.

Recommendation 4.2: Ministry of Justice assume responsibility for Transcription Determination and Costs

It is recommended that the Public Prosecutions branch of the Saskatchewan Ministry of Justice make a determination as to which recorded statements, or parts thereof, will be transcribed, as well as bear the financial burdens associated with the production of those transcripts.

Recommendation 4.2.a: Police Transcript Responsibilities

It is recommended that the police provide, at no charge, any transcript produced as part of a police investigation.

Recommendation 4.2.b: Police Statement Marking Responsibilities

It is recommended that the Saskatchewan Association of Chiefs of Police instruct their personnel to provide marked (time-stamped) annotations with each recorded statement as to the information contained within recorded statements.

Recommendation 4.3: Transcription Unit or Public Tender

It is recommended that either the Government of Saskatchewan explore the creation of a Centralized Transcription Unit housed within the Ministry of Justice OR tender transcription services to a private vendor.

One of the issues arising in the research was the inability to arrive at an accurate cost estimate for transcription. Given the potential enormity of the expense, these figures should be tracked more accurately. The collection of such outcome measures would also aid in future research and program evaluation.

Recommendation 4.4: Track Transcription Costs

It is recommended that the Government of Saskatchewan create a mechanism for tracking expenditures for transcription.

The province of British Columbia has developed a comprehensive memorandum of understanding that addresses many of the topics identified in this list of recommendations. A single document akin to this type of agreement, prepared in accordance with the recommendations of the three committees advocated in this study, could inform the structure and framework, as well as provide additional useful insights in the preparation of a similar agreement in Saskatchewan.

Recommendation 5: Province-Wide Memorandum of Understanding

It is recommended that the government of Saskatchewan request and review the memorandum of understanding created in the province of British Columbia as a reference for the creation of a province-wide memorandum understanding that addresses the multiple disclosure-related issues raised in this report.

Expenditures on public safety in Canada have increased substantially over the past ten years and between 2002 and 2012 the per capita cost of policing in Canada increased by 42% (Hutchins, 2014, p. 33). One reason for these increased costs is the demands placed on public safety agencies to comply with legal decisions, such as *Stinchombe*. Consequently there has been an interest in developing strategies to reduce operational costs while upholding legal requirements. The four broad recommendations presented above provide Saskatchewan justice system stakeholders with a number of options to deliver transcription services in a more consistent and cost-effective manner. While offering a number of options to transform the delivery of transcription services, it is recommended that any new initiatives be matched with clear objectives and strategies for data collection that make long-term evaluations of programmatic successes easier to complete.

One advantage that Saskatchewan police services and justice system stakeholders enjoy is that they have the opportunity to learn from the successes and failures of managing transcription services in other provinces. As a result, it may be worthwhile, over the long term, to meet and collaborate with officials from other jurisdictions to identify promising cost-saving strategies and determine “what works.” Although the stakes are high for police services and public prosecution units in terms of expenditures, the potential costs of not ensuring proper and timely disclosure are also high in terms of the potential for wrongful convictions and the impact on the public’s confidence in the justice system.