

RE-INVENTING CRIMINAL JUSTICE:

A CONTINUING CONVERSATION

Final Report

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The Second National Criminal Justice Symposium:
The Conversation Continues

In January 2009 fifty influential members¹ of the criminal justice system were invited to a meeting in Vancouver. The meeting provided an unprecedented opportunity for police, defence counsel, prosecutors, judges and government officials from across the country to share perspectives on the challenges they collectively face. To the surprise of many of the participants, a strong consensus emerged when it came to identifying the major challenges. They include:

- a crisis in public confidence;
- undue delay and unnecessary complexity;
- no shared vision of fundamental values;
- no common understanding of roles and responsibilities;
- a lack of comparable data;
- an outdated procedural and substantive framework;
- the need for comprehensive “cultural change” to effectively break down institutional silos and implement reforms;
- a lack of communication and collaboration networks;
- a need for comprehensive planning to make better use of technology; and
- static or diminishing resources.

¹ Participants were invited to the symposium in their personal capacity and not as representatives of their court, employer or organization.

A strong consensus also emerged that the challenges facing the system have to be confronted collectively and collaboratively. The symposium itself showed what could be accomplished by working together in an open, frank and respectful way.² Moreover, the participants came away from the meeting confident that progress can be made without compromising the independence and integrity of the component parts of the system.

On January 15 and 16, 2010, eighty senior criminal justice professionals³ were invited to meet and continue the conversation in Montreal. The goal of the second symposium was to collaboratively develop specific recommendations to meet the challenges identified in Vancouver. The work of the symposium was organized around three broad themes: reforming the management of the criminal justice system; collaborative management of the criminal justice system; and non-traditional approaches to criminal justice.

After one and a half days of intensive work, a consensus emerged in support of the following recommendations.⁴

² It was agreed that all discussion at the symposium would be on a “not for attribution” basis.

³ Once again the participants were invited in their personal capacity on the understanding that discussion would not be for attribution.

⁴ The recommendations do not necessarily represent the views of individual participants at the symposium.

Reforming The Management Of The Criminal Justice System

1. Joint police and prosecution teams should be formed to provide early legal and strategic advice and to review, vet and disclose both major and routine case files.

(1.1) There is strong support for police / prosecution collaboration.

(1.2) Dedicated prosecution teams that remain with the case should be created for major cases.

(1.3) Permanent advisory teams should be established to provide advice to the police on any investigation.

(1.4) Prosecution review of warrants should be available where substantial invasions of privacy are potentially involved.

(1.5) These recommendations can be implemented through good practice/policy statements rather than legislation.

2. Standardized prosecution briefs and electronic disclosure should be utilized in both major and routine cases.

(2.1) Police and prosecutors should work together to standardize the case briefs provided by police to prosecutors (national / provincial).

(2.2) Standardized disclosure checklists should be developed for police and prosecutors to establish shared expectations.

- (2.3) Electronic disclosure should be implemented as the norm, coupled with collaborative training.⁵
 - (2.4) Disclosure should be provided prior to the first court appearance of the accused, where possible.
 - (2.5) Authority should be vested in judges to establish disclosure timelines.
 - (2.6) The disclosure models in other jurisdictions (e.g. New Zealand and the United Kingdom) should be evaluated.
3. The criminal justice system should make greater and more effective use of information technology.
- (3.1) Technology should be used to limit unnecessary court appearances and unnecessary costs (e.g. email/ telephone appearances and internet scheduling).
 - (3.2) The use of web-based disclosure should be examined.
 - (3.3) Consideration should be given to the use of electronic knowledge bases (e.g. facta)
 - (3.4) The potential of voice-activated transcripts in certain circumstances should be examined.
 - (3.5) There should be inter-sectoral sharing of innovative IT initiatives (e.g. the Alberta initiative)

⁵ This can be achieved through jurisdictional directives with protocols developed collaboratively for self-represented accused and those in custody.

4. Judicial powers at the front end of the process should be increased to better manage adjournments and determine *Charter* issues.

(4.1) The *Criminal Code* should be amended to permit pre-trial motions to be determined by either the case management judge or the trial judge, including in the following areas.

- Disclosure
- *Charter* motions
- Severance
- Time limits
- Admissibility of evidence (e.g. confessions, wiretap, etc.)

(4.2) Decisions made as above should be binding at trial unless the trial judge decides otherwise (e.g. due to a material change in circumstances)

(4.3) There should be stronger judicial management of the early stages of the process (e.g. scheduling of hearings and trial), to be supported by protocols and judicial education.

(4.4) Protocols should be developed to support out of court disclosure mechanisms.

5. Active judicial case management and more effective judicial pre-trials should be supported through enhanced case management proceedings, including:

- vertical prosecution file management,
- meaningful court appearances,
- electronic scheduling,
- 2 or 3 month long adjournments and then, if no progress, strong judicial management, and
- facilitated guilty pleas.

6. There should be mechanisms for “carrying-over” judicial decisions made in earlier proceedings.

(6.1) Decisions from the previous trial should be binding (absent, for example, a material change in circumstances) on subsequent re-trials unless related to the reason for the retrial.

(6.2) Admissions made at the previous trial should be binding (absent, for example, a material change in circumstances) on subsequent re-trials unless related to the reason for the re-trial.

Collaborative Management Of The Criminal Justice System

7. All the appropriate parties at the local and regional level should be brought together to identify and implement a series of specific

reforms that are then evaluated against agreed upon, measurable and transparent goals.

(7.1) There was strong support for this collaborative model.⁶

(7.2) Implementing this model will require cultural change, including:

- bar admission and other forms or early and continuing legal education/ discussion about civility in the profession/reform/collaboration,
- similar opportunities for police, prosecutors and defence counsel to discuss their professional relationship/ collaboration,
- enhanced mentoring across the justice system, and
- providing opportunities for all stakeholders (e.g. social services, mental health professionals) to be part of the problem identification and solution process.

(7.3) Agreed upon and reliable performance data should be gathered.

(7.4) There must be visible leadership “from the top.”

8. Interdisciplinary education should be used as a tool to foster collaboration.

⁶ The financial and organizational challenges this presents for different sectors (e.g. the defence bar) were recognized.

(8.1) There is strong support for the proposition that interdisciplinary education involving justice system partners and others is a highly effective means of promoting collaboration.

(8.2) Public education should involve the collaborative participation of various justice sectors so the public sees the commitment within the justice system to work collaboratively.

(8.2) Learning modules to support interdisciplinary education should be created.

9. Local and provincial criminal justice committees should be established as collaborative management tools.

(9.1) Replicating the Symposium approach at the local/provincial level is encouraged.

(9.2) Factors for success include:

- ensuring all relevant stakeholder groups are represented;
- meet with sufficient regularity that working relationships develop on “low stress” as well as “high stress” issues;
- representation of interests as opposed to representation of positions;
- senior leadership with decision making authority (including judicial leadership)
- openness and candour;
- development of common vision;
- prior circulation of agenda with specific issues;
- minutes/record of proceedings/ decision points/next steps;

- aim for some early success (“quick wins”);
- establish measurable goals and accountability; and
- make the process transparent.

Non-Traditional Approaches To Criminal Justice

10. A number of common themes emerged that demonstrate the linkages between various non-traditional approaches to criminal justice. There was consensus that they include the following.

(10.1) The importance of early identification of all relevant information about the offender, using approaches that reflect a broad inter-disciplinary perspective to the offender and the circumstances that contribute to the commission of one or more criminal offences. This requires:

- Effective means of gathering all relevant information,
- Collaboration between the police and other services, such as mental health, and
- The use of a “triage” approach early in the process.

(10.2) The value of a range of alternative measures (e.g. diversion) being available at all stages of the process to deal with problems represented by the offender and the alleged offence(s). These alternative measures should meet the following criteria.

- Are effective with less serious offences.

- Can be effective with more serious offences, if well designed and if there is adequate protection for the victim and the community.
- Require an effective response to the overall problem as well as the offence itself, along with the ability to make effective referrals to appropriate community-based services.
- Require special attention to the task of building public confidence in these approaches.
- Recognize the real value of direct accountability responses e.g. restitution, community service.
- Adopt early resolution techniques and involve senior, experienced Crown counsel.

(10.3) There is need for additional resources to be invested in innovative, multi-disciplinary alternative measures.

11. There was broad support for “problem-solving” approaches, both through special Courts and the adoption of a problem-solving focus within the regular criminal process.

(11.1) These approaches require creativity and collaboration between the justice system and other sectors (e.g. between the police and other needed services, such as mental health) and the involvement of the community.

(11.2) Problem solving courts are of real value but the approach they represent needs to be adopted more broadly across the criminal justice system. This will require additional judicial education programmes on the relevant techniques and approaches.

(11.3) There are good examples that can serve as models for this approach (e.g. the Ottawa program)

(11.4) There is real value in approaches that maintains court control until the problem solving measures are completed. This may require review of the law relating to suspended sentences

(11.5) There is a need to analyze the cost/benefit of specialized problem-solving courts when compared to other problem solving models, taking a broad economic analysis approach and also to broaden the number of people who have access to the existing courts

12. There was strong interest in exploring how the concept of proportionality might be better introduced into the criminal process. For example, a somewhat different process with more relaxed requirements on some issues (e.g. disclosure) when the Crown declares that it is not seeking a jail sentence. It was agreed that there is value in exploring this and other ideas without determining at this point what kinds of approaches are most promising.

13. It was agreed that consideration must be given to innovative approaches to the problems posed by “chronic offenders.”

(13.1) For many chronic offenders, an early, multi-disciplinary, “triage” approach can be effective.

(13.2) There is a need to evaluate the effectiveness of innovative approaches, such as intensive probation, Crown and defence counsel with in-depth knowledge of the community and its resources, early introduction of community-based accountability measures, strong linkages with the mental health system, and early Crown screening.

(13.3) How is the public best protected from persistent “chronic offenders”? Unfortunately, in some cases there will be no alternative to incarceration.

14. It was agreed that the criminal justice system should learn more about traditional healing processes and other forms of restorative justice. There is a need to respond to the empirical research on when such approaches are effective and to invest in good evaluation of the programmes that are introduced. It is recognized that these approaches should be available at all stages of the criminal process and can increase participant satisfaction with the process. There was support for the proposition that restorative justice approaches must pay attention to the needs of victims; and require strong community involvement and support. There is also need for public education

about restorative approaches (e.g. effectively communicating successful examples of restorative justice)

The Montreal meeting gave the organizing committee a mandate to plan a third national symposium. Some of the topics suggested for the next symposium include:

- 1) report backs on local programmes addressing specific criminal justice challenges;
- 2) how to increase certainty of result as a means of facilitating early resolution;
- 3) developing and introducing the principle of proportionality;
- 4) maximizing Provincial Court jurisdiction;
- 5) the delivery of legal aid services; and
- 6) sentencing.