



RE-INVENTING CRIMINAL JUSTICE:
THE THIRD NATIONAL SYMPOSIUM

Final Report

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Toronto, Ontario

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The Third National Criminal Justice Symposium

In January 2011 eighty-five influential members¹ of the criminal justice system were invited to a meeting in Toronto. This meeting was the third² in a series of unprecedented opportunities for police, defence counsel, prosecutors, judges and government officials from across the country to gather together in an informal setting. The primary purpose for the meetings is to allow members of the criminal justice system to candidly share, off the record, perspectives on and solutions to the challenges they collectively face.

The Toronto meeting reviewed the progress made in response to previous recommendations and embraced an ambitious agenda for future work. Reports on Ontario's Justice on Target initiative,³ Alberta's Court Case Management Programme,⁴ and B.C.'s Prolific

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

² The first symposium was held in 2009 in Vancouver. A consensus emerged at the meeting that the criminal justice system is facing a crisis in public confidence because of undue delay and unnecessary complexity. Those who work in the system lack a shared vision of fundamental values and a common understanding of roles and responsibilities. It was agreed that these challenges have to be confronted collaboratively and that progress can be made on them without compromising the independence and integrity of the component parts of the system. The conversation continued in 2010 in Montreal. It led to a consensus recommending the adoption of 15 collaborative measures to improve management of the system and promote non-traditional approaches.

³ For further information see: <http://www.attorneygeneral.jus.gov.on.ca/english/jot>

⁴ For further information see: <http://www.albertacourts.ab.ca/provincialcourt/courtcasemanagement/tabid/331/default.aspx>

Offender Management Programme,⁵ demonstrated what can be achieved through collaborative efforts at the local level. A review of Bill C-53⁶ (*The Fair and Efficient Trials Act*) indicated an intention to amend the *Criminal Code* to reflect recommendations relating to “mega-trials”, including recommendations brought forward at previous symposia.

The Steering Committee on Justice Efficiencies and Access to Justice has struck a subcommittee to look at the issue of disclosure in “day to day” cases. A questionnaire was distributed at last year’s Symposium to obtain input as the first step in the Subcommittee’s consultation process. A number of issues emerged during the consultation process on which there are differing views. The Subcommittee’s final consultation took place at this year’s symposium and focused on the contentious issues.

Following a presentation on the concept of proportionality and how it might be applied to address challenges identified at previous symposia, discussion focused on how the concept could be used to respond to challenges in drinking and driving cases. A potential criminal “no jail” option was compared with B.C.’s administrative option. The ensuing discussion identified a wide range of opportunities presented by non-traditional approaches to drinking and

⁵ For further information see:

http://www.criminaljusticereform.gov.bc.ca/en/justice_reform_projects/prolific_offender_management/pdf/pom_pilot_overview.pdf; and
http://www.criminaljusticereform.gov.bc.ca/en/justice_reform_projects/prolific_offender_management/pdf/POMsNewsletterMar2009.pdf

⁶ The Bill was introduced and received first reading on November 1, 2010.

driving cases but also recognized the difficulties that will have to be overcome to implement them.

The final area of discussion at the Toronto Symposium was public representation in criminal justice. This topic sparked discussion about 1) the challenges faced by legal aid in responding to the major problems in the criminal justice system (e.g. mental disorder, substance abuse and unrepresented accused); 2) reconciling a rights-based criminal law approach with a therapeutic client needs based approach, and 3) developing common policy objectives across all sectors of the criminal justice system within which legal aid could work collaboratively with others towards outcomes that are consistent.

Symposium Consensus

During plenary discussion consensus emerged around the following issues.

1. Bill C-53

- There is general support for the Bill.
- If the Bill is passed, education should play an important role in implementing the legislation.

2. Disclosure

- There is general support for disclosure reform (e.g. national standards for police and crowns, better use of electronic disclosure).
- Accountability measures should be introduced but not “police certification.”
- There is no need to create a criminal offence for misuse of disclosure.
- Disclosure would be improved by 1) increased police front end access to prosecutors, and 2) improved police – prosecution co-operation (including joint police-prosecution disclosure centres where appropriate).
- There was some acceptance for prosecution advice regarding the scope of the investigation.
- If resources permit, there is value in having pre-trial advice and trial done by different prosecutors.

3. Proportionality

- There is general support for continuing work on this issue.
- Further discussion of the application of these approaches to other high volume offences is warranted.
- A) The criminal “no jail: option:
 - There is limited support in principle for this option

- Watering down protection for the accused within a criminal trial is a major concern – particularly if it is proposed to affect *Charter* protections.
- B) Additional approaches:
 - 1) Administrative remedies
 - There is support for continuing examination of this option – it appears to be having a “cultural impact” in B.C. and monitoring of the B.C. experience should continue.
 - Issues to be considered:
 - building and maintaining public understanding and support for this option
 - dealing with concerns for unequal applications (e.g. of the administrative versus criminal response)
 - longer term effect on stigmatization of impaired driving
 - 2) The “No Contest” option (new)
 - charge held in abeyance for 24 months pending good behavior of accused
 - could be used in conjunction with administrative options
 - alternative method: stay with power to reinstate
 - 3) *Highway Traffic Act* offence or other provincial offence (reflecting different kinds of sanctions, e.g. restricted licenses)

- C) Other suggestions
 - Diversion linked to treatment and other programming
 - Better case management
 - Changing the law (e.g. zero alcohol tolerance; no necessity for reasonable grounds)
 - Ignition interlock in all cars
 - Support for consideration of these kinds of options for other high volume offences

4. Public Participation in Criminal Justice

Problems:

- Holistic justice too focused on specialist courts.
- Frequently the prosecution not aware of the problems of the accused.
- Defence lawyers are not social workers.
- The defence is forced to focus on single offence – requirement of conviction before accused gets help – there is a conflict between getting paid vs. best solution for the client – professional obligation to accused who has a defence.
- Lack of community resources to help client.
- The rules around the use of scarce legal aid resources.
- Repeat offenders with greatest non-legal needs not eligible for alternative measures and diversion.
- Each sector not connected to other relevant sectors – silo – disconnected from community.

- Increase in self-represented litigants.

Potential Solutions:

- Legal aid training for lawyers dealing with front end issues (understand services available and issues frequently faced by accused).
- Shift in role of duty counsel in court: eligibility relaxed: duty counsel able to assist more people at front end: approach Crown for plea resolution discussion, etc.
- Greater appreciation of underlying factors in anti-social conduct.
- Use of specialty courts (appears to be effective).
- Involve other types of professions within the justice system (with expertise to deal with social issues).
- Need to examine alternatives for less serious issues
 - Greater use of “no contest”
 - First time offenders; consideration to repeat offenders, availability of diversion
- Crown “on the line” for decision
 - Legislation to provide protection for Crown (when diversion programs to be used)
- Move resources to beginning of process (not only to be available after guilty plea).
- Involve community resources / involve community members in solution
 - Tap into specialized resources in community
- Community Aid – not legal aid
- Think in holistic manner

- Specialized courts and specialized lawyers (i.e. with medical degrees, etc.).
- Not legal aid ~ public representation
 - Public representation to bring non-legal resources into court system
 - Learn from mental health court – social liaison / resource to court
 - Adding resources – delivery of service models to include delivery to court (no cost to legal aid).
- Legal aid needs a PR “makeover”
- Will always need full service from defence lawyers (rights based)
 - Legal aid service delivery is a continuum
 - Not everyone requires “full service” / rights based
 - Court support workers / navigators to community resources

5. Comments for future Symposia

- There is support for continuation / future symposium.
- How do we measure criminal justice reform progress?
- Lack of representation from Corrections is unfortunate. They should be represented.
- Look at specialized courts.
- Mental health – incorporate mental health expertise / MOH (provincial and / or health authorities)
- Probation services / social service agency
- Aboriginal overrepresentation in the criminal justice system