

# **RE-INVENTING CRIMINAL JUSTICE:**

**THE TENTH NATIONAL SYMPOSIUM**

## **FINAL REPORT**

Fairmont Queen Elizabeth  
Montreal, QC

January 26/ 27, 2018

# Reinventing Criminal Justice: The Tenth National Symposium

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## Reinventing in the Shadow of *R v. Jordan*

Fairmont Queen Elizabeth, Montréal, January 26-27, 2018

2018 marks the tenth anniversary of the National Justice Symposium, a forum for criminal justice system practitioners, professionals, researchers and other experts to share off-the-record, candid perspectives and solutions regarding the challenge of fashioning a responsive, accessible and accountable criminal justice system.

Every year, the Symposium focuses on a different aspect of reinventing and improving the criminal justice system. This year, the Symposium focused on reforms which might be prioritized to transform the criminal justice system, in light of the systemic resource and process implications of the Supreme Court's ruling in *R. v. Jordan* (SCC 2016). More than 100 participants attended the Symposium, which was chaired by the Honourable Raymond Wyant and facilitated by George Thomson.

### Focus of the Tenth Symposium: Reinventing in the Shadow of Jordan

In setting new, significantly shorter timelines for the conduct of criminal cases, the Supreme Court decision in *R. v. Jordan* has challenged the criminal justice system and all who work in it.

The federal and provincial governments are engaged in developing measures to ensure the system is able to meet the timelines established by the court. Will these measures only postpone increasingly serious questions about the ability of our present criminal justice system to manage the demands being made of it? Or can we seize this opportunity to address fundamental concerns about fairness and equity, and ensure that the criminal justice system does not continue to penalize the most vulnerable among us?

This year, participants at the Tenth Symposium sought to build on the work of the past decade, given the impetus of this new, significant pressure on the system. Dialogue focused on two themes that have emerged from all the past discussions:

- creating a more focused, smarter criminal justice system, one that is used with restraint; and
- supporting strong, sustained leadership, guided by a shared vision of the role of the criminal justice system.

While some of the issues previously discussed at past Symposia have subsequently been the subject of action at either the federal or provincial level, many other promising approaches – for a variety of reasons – have not been tried or implemented in any significant way. Participants considered whether the current urgency and pressure on the system has created new opportunities for action and experiment in new directions.

## Past recommendations informing the Tenth Symposium

As noted in introductory comments by the chair, the Honourable Raymond Wyant, five recurring themes have emerged from previous Symposia. More detailed summaries of the themes noted below were provided to participants, as a way of situating previous discussions and recommendations in the context of the 2018 dialogue.

### Collaboration and partnerships

From inception, there have been repeated recommendations to break silos, increase collaboration and information sharing, and build partnerships both within the criminal justice system and with other systems (*e.g.*, health, social services) and stakeholders (*e.g.*, community, business) to ensure a holistic approach to addressing criminal justice system issues. Concrete examples discussed include:

- 1) increasing front-end communication and collaboration between police and prosecution before decisions are made;
- 2) encouraging more multidisciplinary community “hub” models; and
- 3) creating collaborative programs with the health system.

### Awareness, understanding, and continual learning

The need for continual education has also been discussed at past symposia, both for the public and for those working in the criminal justice system. With respect to public education, previous symposia have signaled the need to improve Canadian’s awareness and understanding of the criminal justice system, its successes, and its failures. For practitioners, recommendations made to improve education included:

- 1) more training and guidance for Crown and defense counsel on substantive issues such as long and complex trials and unrepresented accused;
- 2) more general interdisciplinary education (*e.g.*, addictions, mental health, etc.); and
- 3) training and information on alternatives to the criminal justice system.

### Increased options and flexibility

Past symposium discussions have underscored the inflexibility of the current criminal justice system in many areas (*e.g.*, legislative, culture). Numerous recommendations have been made to increase availability and use of diversion and alternative options to incarceration. It has been noted that supporting alternatives to the system requires many things:

- 1) the development and implementation of meaningful and well-elaborated options;
- 2) the allocation of sufficient resources;
- 3) the ability to identify appropriate alternatives for each case; and
- 4) the provision of adequate training on these alternatives. Increased options need to have the flexibility to adapt to the individual and local community circumstances.

### Technology, innovation, and experimentation

Throughout the symposia, the importance of technology and innovation has been demonstrated through the numerous examples of innovative local approaches that have been operating with the view to transform the criminal justice system. Several recommendations have focused on using technology to improve everyday practices, such as electronic disclosure, electronic court booking, and overall smart technology and case management.

### Research, evaluation, and performance measurement

Past symposia have repetitively highlighted the limitations of the research and information currently available to support data-driven decision making. Overall, addressing these limitations was identified as a priority. The important contributions of research, evaluation, and performance measurement were highlighted in many areas including: developing goals and standards, creating frameworks to measure performance, assessing outcomes, and enhancing transparency, information sharing, and overall data quality.

# Symposium proceedings

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## Session 1: Planning an effective future Symposium on Indigenous Justice

Prior to engaging on the substantive discussion related to *Jordan*, at the outset of the Symposium the organizers and participants took the opportunity (while convened) to have an initial discussion of the proposed theme for the Eleventh Symposium in 2019, Indigenous Justice. This theme has been proposed in acknowledgement of the failure of many of the reforms of recent decades to make a real difference to the overrepresentation of Indigenous Canadians in the criminal justice system.

To initiate the discussion, an expert panel framed the discussion from the outset, helping to set the stage for more comprehensive planning of a 2019 Symposium wholly dedicated to Indigenous Justice. Panelists Doug White (Co-Chair for Criminal Justice, Aboriginal Justice Council of British Columbia), and Kimberly Murray (Assistant Deputy Attorney General, Indigenous Justice Division, Ontario Ministry of the Attorney General), provided important context to consider for the ensuing discussions.

### Discussion of potential themes and topics

Key observations raised in the presentations and in the ensuing plenary discussion included the following, for consideration in the development of the 2019 Symposium's agenda.

- **Change in the justice system is central to reconciliation.** The justice system has not been a friend to Indigenous people. Colonial violence and cultural genocide are not easily overcome, and lead to understandable cynicism and disengagement. No other sector is the object of as many calls-to-action (more than 20) as the justice sector. Leadership in the justice system is essential, as is the full involvement of Indigenous leadership.
- **Transformation means thinking outside the colonial system.** How do we change the mainstream system to incorporate Indigenous principles? Can we change the criminal justice system completely to focus more on healing? This is not a one-way discussion, and is not about assimilation.
- **There is a large range of programmatic work to consider.** There is much work to be done to create and support programs and services that are culturally relevant and responsive. Investments in such approaches as *Gladue* report-writing resources and after-care programs, community-based and culturally-based restorative justice programs, culturally-safe support for victims, and community-based bail and remand programs, will be essential for progress and for healing.

- **There must be focus on capacity of Indigenous legal systems and revitalization of laws.** Indigenous peoples had diverse political systems and law prior to colonization. The UN has indicated the right to self-determination is a central right from which all other rights flow, including the rights to maintain and strengthen Indigenous legal institutions.
- **The impact of residential schooling is pervasive in criminal justice.** Any dialogue concerning Indigenous peoples and the criminal justice system must confront the tremendous, ongoing and cyclical emotional impact of the colonial violence inflicted by the residential schooling system. More broadly, we must build public and professional empathy in combatting systemic racism.
- **There should be “nothing about us without us.”** New directions for the justice system and Indigenous people which are aimed at reconciliation must have Indigenous people at the heart of discussion, planning and implementation. Ontario has led the way with significant Indigenization of key functions within its Ministry of Attorney-General. The broader principle however extends to far more than reorganizations and hiring – as vital as those are.
- **We must consider collaborative responses to complex issues.** Participants raised the problem of working in silos, while our challenges are historically rooted, socially complex, and extend across the many artificial separations of government work. For instance, *Gladue* cannot simply be seen as an add-on to colonial justice processes. It is part of the broader objective of reconnecting Indigenous people with culture and community. This cannot be done by any sector in isolation. Indigenous leaders and communities, health agencies, child welfare and others are essential partners.
- **The rights and safety of victims cannot be overlooked.** In the urgency of improving the system’s response to Indigenous offenders, we need also to be respecting Indigenous victims. There is a perception that large amounts of resources are spent on the offender, but little on victims; there needs to be space for victims in *e.g.* the *Gladue* process.

### Event design

With respect to the design of the event, participants suggested the location needs to be determined soon, in consultation with Indigenous leadership, with proper protocols followed and the right representation from Indigenous communities. The event should be designed along with Indigenous people and elders, with cultural competence training for participants in advance if possible. It will be important to show what is working across the country and build on that positivity.

Several challenges were identified, including how to address all of the systems that people are interested in; how to design the event to make the focus on healing and reconciliation, not “us

and them”; how to choose the right space/place; the power of place must be considered; and how to pick a format which is culturally appropriate and provides a safe venue for dialogue.

The range of people who should attend may mean reexamining the usual size of the Symposium. It is important to have Indigenous representation at the conference, and it must also include people from outside the system. Organizers will need to address the issue of more people, space and time requirements. Organizers also need to think about having Indigenous representatives from each province.

## Session 2: A smarter, more focused criminal justice system

In the second discussion session, participants turned to consideration of promising strategies for creating a more focused and smarter criminal justice system, one that is used with restraint and that encourages discretion and alternatives to incarceration.

The session began with presentations from a panel including the Honourable Raymond Wyant; Anthony Doob, Professor Emeritus of Criminology at the University of Toronto; Justin Piché, Associate Professor of Criminology at the University of Ottawa; Jennifer Llewellyn, Professor, Schulich School of Law at Dalhousie University; and Matthew Torigian, Deputy Minister of Community Safety, Ontario Ministry of Community Safety & Correctional Services. Key themes of the panel and the ensuing plenary discussion were as follows.

### 1. Pursue broader, structural avenues to divert from system

As the justice system struggles to meet the requirements imposed by Jordan, a key step is to consider whether all of the matters currently brought into the justice system need to be there. The symposium was not able to address all of the potential matters that could be dealt with outside of the justice system, but areas that should be considered include the decriminalization of drug use, the creation of an administrative system to deal with administration of justice offences, and changes to the bail system to ensure that minor bail violations, unrelated to public safety, do not lead automatically to incarceration. Changes might include eliminating sureties in most cases, reducing bail conditions, providing bail supervision, and permitting “earned bail” based on behaviour. Other social strategies that would have a significant impact on the justice system include the provision of wrap around mental health care and the implementation of safe drug consumption sites.

### 2. Divert new expenditures to prevention rather than expanding *status quo*

It is always a challenge to find ways to move money from one part of the system to another, particularly if an investment needs to be made first before savings can be realized down the road. An opportunity arises in a situation when a jurisdiction feels compelled to make a significant investment in the justice system to deal with what is perceived to be a crisis, for example, the need for new prisons to reduce prison overcrowding. If money is to be allocated

to the justice system, it is critical that options to increase community alternatives and reduce the reliance on incarceration be considered, before simply building more jails.

### 3. Apply youth justice principles and approach to legislative framework of adult system

Criminal law reform since at least the 1960s has had as a principal focus the reduction of our reliance on incarceration as a response to criminal behaviour. Despite this, there has been little change in the adult incarceration rate.

The Youth Criminal Justice Act is one of the few examples of Canadian criminal justice legislative reform clearly meeting its objectives, in this case to reduce the incarceration of youth. From 1997 to 2015, youth serving custodial sentences in Canada declined by 84%, from 3,825 to 527. At the same time, youth crime rates, and the rates of youth in contact with police, as well as the youth crime severity index, have dropped substantially. In the same period, the adult incarceration rate remained largely unchanged.

Indigenous youth have not benefited to the same extent as non-Indigenous youth, although their situation is still significantly improved. For example, in Ontario, sentenced admissions for non-Indigenous youth declined by 81% between 2003 and 2015, while Indigenous admissions declined by 74%, thus increasing the representation of Indigenous youth from 9.7% of the sentenced custody population to 12.5%. It will be critical to understand the reasons for this unequal impact.

The YCJA is significantly different from earlier youth-focused criminal legislation, as well as from the regime for adults. A clear philosophy informs the legislation, which provides explicit criteria that must be satisfied before charges proceed, or pre-trial detention or incarceration as a disposition can be used. These criteria have successfully changed the decision making of all justice system participants. Extrajudicial measures are the norm and must be considered. Hurdles are put in place that must be overcome before custody is an option. Custody is not an option as an alternative to appropriate child protection, mental health or other measures.

In discussions, participants agreed that the YCJA approach could benefit the adult system. The proven success of the YCJA in reducing the use of custody while not leading to higher crime (and possibly to contributing to lower crime rates) should assist with developing the public support necessary for major criminal justice reform. Savings from reductions in incarceration could be redeployed to prevention and other positive intervention programs.

An interim measure might be to increase the maximum age for youth to be dealt with in the youth system, perhaps to age 25. This is supported by recent research that the brain develops and matures until the age of 25, suggesting that there should be accommodation for less than adult maturity.

#### 4. Develop a comprehensive, effective restorative justice approach

Restorative Justice is a relational approach to justice – it is a way of thinking which involves the way in which we relate interpersonally, socially and in community, relationships that are based on equal respect, concern, care and dignity. It can contribute to a justice system that is used with restraint, encourages discretion and encourages alternatives to incarceration.

An effective restorative process must be collaborative, cross-system and inclusive. We need to build working relationships and trust within and beyond the criminal justice system. A restorative process should focus on individual and collective taking of responsibility (not on blame). Solutions need to be forward-focused, preventative and proactive. We should intervene at the lowest level or earliest point in a dispute or problem, creating solutions with information from the people most likely to know what would be effective and who have a stake in outcome of the situation. We need to access the experience, knowledge and perspectives of others to support the informed exercise of discretion and good decisions. There needs to be a process to follow through after the decision to promote and support implementation. Process and decisions should be informed by data and research.

We need to limit the “on-ramps” to the justice system, for example through prevention, RJ, school programs, support for families. We also need to strengthen the “off-ramps”, not just diversion but meaningful processes to consider options for resolution without incarceration. For those who remain in the system, we also need to think restoratively.

#### 5. Adopt collaborative approaches by default when addressing complex justice issues

Collaboration within the justice system and across sectors is consistently identified as a key strategy. One approach to enhancing collaboration is the development of “hubs” or “situation tables” as the focus of collaborative, cross system work. Hubs are all about relationships, early intervention, early assessment. They bring people together at an early point in intervening in problem situations. They can provide important wrap around services for people, and enable early intervention before the police get called. They use data, not only from the justice system but also from other sectors such as social services and mental health and addictions. They consider the impact of relationships, for example the relationship between school absence and criminal activity, between the timing of income assistance benefits distribution and increases in alcohol use and school absences. To improve outcomes we have to start designing systems for people not for systems or for the people who work in them.

Participants identified some significant differences between hubs and a restorative approach. For example, the hub model is about professionals getting together while restorative justice is more community-oriented. The hub model does not involve everyone to resolve issues, and there remains the silo of federal (legislative) and provincial (administration of justice) jurisdictions.

Collaboration raises issues related to power: does someone need to surrender power in order to collaborate? Who needs to be at the table? We need to identify who the players are and

what are their roles in a collaborative structure. Certainly, better collaboration across social service sectors in terms of data, confidentiality, and privacy would be an improvement. It is important to address the issue of silos; but in practical terms, how would this work?

There is a culture of risk aversion (system failure and then move backwards), and there are real issues when risks are taken over the short-term. For instance, the BC approach to impaired driving is an example of the changing of attitudes, of public trust and education with respect to the police role.

The difficulty of information sharing was consistently raised as a barrier to effective collaboration. Options to promote information sharing should be explored, including legislation. Participants wondered whether it would be helpful to create a new “super” ministry, for example with a mandate for “Community Safety and Wellbeing”. This could deal with income assistance, housing, children, mental health, early years, and police. It was thought that having all authorities under the same umbrella would reduce privacy barriers and increase collaboration, although it would increase the complexity of managing such a large organization.

Finally, the role of police was raised. We know that a substantial percentage, if not the majority, of police work does not relate to criminal investigations, but rather a variety of social and community problems. While police often suggest that other agencies and parts of government need to respond more effectively, another approach would be to re-imagine the role of police and see them as an integral part of social security. It might be then that they should not be located in the justice system but in social services.

## 6. Systemic restraint in applying criminal justice solutions to social problems

Participants were of the view that it is not a matter of selecting a single approach that would solve the immense challenges facing the justice system. We need a multifaceted strategy, beginning with ensuring that only those matters that require a criminal justice response are caught up in the system. Initially that should be through legislating entire classes of matters out of the criminal justice system. For those that remain, the use of early restorative approaches and collaboration through hubs or situation tables would reduce conflict and make it harder for individual cases to get into the criminal justice system. For those cases in the system, the YCJA offers an extremely positive legislative framework to guide decision makers at all stages of the criminal justice process towards decisions that focus on community dispositions. Finally, it will be important to articulate the overarching goal of reform both to guide legislation and implementation, as well as to generate public support.

## Session 3: Transformative leadership

This session reflected on the second theme from past Symposia: supporting strong, sustained leadership, guided by a shared vision of the role of the criminal justice system. The

multidisciplinary panel focussed on what needs to be present to create an environment in which creative leadership, innovation, and risk taking are fostered and supported. The panellists were Dr. Jeffrey Turnbull (Ottawa Hospital), The Honourable Pamela Williams, Chief Judge, Provincial Court of Nova Scotia, and Deputy Chief Shawna Coxon (Toronto Police Service).

The panellists suggested that the criminal justice system has much to learn from other sectors. Our institutions, as is the case in many sectors, have a profound history and traditions, and are in fact structured to prevent change. There needs to be a willingness to disrupt the established ways of doing things and inventiveness to consider how the traditional processes can be re-thought. A challenge for us is that we don't understand the perspective of others in relation to the same clients, for example health and social services. So real change requires inter-sectoral commitment, transparency and accountability.

For example, in the re-thinking of the Toronto Police Service, the leadership group was half police and half who were leaders from other sectors. Rather than trying to implement a new approach on their own, they embedded police in "innovation hubs". It was critical not to have a top down process, but rather to get all levels of staff involved. An organizing principle was to engage everyone – they all have to feel the pain of inaction – as innovation is everyone's responsibility.

There has been a lot of discussion about and research into the social determinants of health, but these are largely the same as the social determinants of justice, so there is much to be learned from the health sector.

Leadership is the ability to move from compelling social problems to solutions. You need consensus to build a case for change. A leader has to have passion, patience and perseverance, and the ability to develop a consensus. It is also important to understand the difference between leadership and management. A key feature of leadership is effectiveness, while efficiency is a management role. It may be that you can't combine leadership with a management role.

Leaders must be consensus builders, providing a vision and direction for the enterprise to be successful. There must be effective use of data, and changes need to be sustainable over the longer run. Leaders must take risks, and enlist buy-in. It is critical to tolerate risk in order to drive the significant change that will make a difference. It helps if the cost of inaction is seen as greater than the cost of failure.

Significant change can take time and requires a period of building public consensus around both the problem and the solution. *Jordan* has given us an opportunity to capitalize on shared perspective that the system is in crisis, and the political will and resources to take action. It is not often that justice issues get priority in the political arena over other issues such as health, so we should not lose this opportunity. The need for transparency was highlighted – it is critical that there is no perception of a secret agenda.

Participants discussed some of the barriers encountered to transformational change. Sometimes change is embraced, and other times not. There is aversion to risk, because of fear, missing metrics, bureaucracy, mindset, ideology, difficulty implementing change at different levels. Leaders must be courageous, passionate, engaging, with strong negotiating skills and powers of persuasion. Leadership can come from various places, the public can be a leader, and movements such as #metoo can also provide leadership. Leadership can come from groups such as Indigenous Peoples, LGBTQ2, health & social services, police, and justice workers.

It was suggested that the person who leads should be the person who “feels the pain”, i.e. the community at the community level. At the justice level, the judiciary “feels the pain”. They need to lead in the hub model and bring the people to the system that they can change, and take responsibility for doing so.

The Symposium adjourned for the day following this discussion. In the evening, participants enjoyed a presentation by Molly Baldwin, representing the Roca program in New England. Roca is modeled on a theory of change that young people, when re-engaged through positive and intensive relationships, can change their behaviors and develop life, education, and employment skills to disrupt the cycles of poverty and incarceration.

## Session 4: The reforms emerging from the post-*Jordan* discussions

Day Two of the Symposium commenced with the final session, focused on initiatives currently being pursued or under consideration by the Courts and Crown, particularly in Ontario and Quebec, to address the challenges raised by *Jordan*.

Panellists included the Honourable Lise Maisonneuve, Chief Justice of the Ontario Court of Justice; the Honourable Danielle Côté, Associate Chief Judge, Criminal and Penal Division, Court of Quebec; Denis Marsolais, Administrator of State and Government Coordinator, Office of Organizational Transformation of the Justice System, Quebec Ministry of Justice; and Susan Kyle, Assistant Deputy Attorney General, Criminal Law Division, Ontario Ministry of the Attorney General.

In the plenary dialogue that followed, the following observations emerged regarding the post-*Jordan* discussions.

### 1. A needed focus on efficiencies, even regarding basic technology

*Jordan* provides an opportunity to look at efficiencies, but we also need to set the stage for broader transformations. Of course, there can be no compromise in quality or due process for the sake of timelines. Some delay is justifiable and it is important to be mindful of this.

A variety of strategies will be needed to address efficiencies and delays, including Criminal Code amendments. Technology is critical to overcome inefficiencies, and we need to creating system wide approach so that information can flow smoothly across sectoral boundaries.

Disclosure is a huge challenge and we have to design a system for the future. There are still jurisdictions where disclosure is paper-based. But even in places with e-disclosure, there are technical or logistical barriers to making it available, especially for unrepresented accused, or situations where there has been a change of counsel.

Data has become increasingly important to guide policy and operational decisions, but we could still use it more consistently and effectively, including to create measures to tell us whether our strategies are successful and the system is actually more efficient.

## 2. Considering the bigger picture: more systemic changes

More generally, it makes sense to look carefully at whether everything that is currently dealt with in criminal court really needs to be there. Decriminalization should be considered wherever possible. But a more strategic approach could be taken to offences that remain criminal. For example, BC has removed the vast majority of impaired driving cases from the courts by creating an administrative approach where the majority of cases are dealt with by the police. There may be other examples where this approach would be appropriate.

Administration of justice offences are a growing percentage of the criminal court caseload. There have been public calls for more prosecution in the wake of notorious cases, but “bad cases make bad policy”. Legislative change should be considered, but if legislation requires more discretion to be exercised, this is a culture change and there have to be discussions about how to use this discretion.

Early intervention and better assistance to people without counsel at first appearance can provide meaningful help that leads to early resolution. For example in BC, expanded duty counsel provides service not just on the one day of the court appearance but throughout the process to ensure continuity. This initiative has assisted a large group of people who wouldn't otherwise qualify for legal aid.

Generally it was thought that moving resources to front end of the process (at charge stage), would be beneficial, as has been the case in Manitoba, where this has been successful and has led to reduced time to trial.

## 3. Growing relevance of judicial discretion (and supports for same) in the *Jordan* era

The effective exercise of discretion was raised in the context of many of the strategies. A challenge is that it can be hard for more junior police or legal counsel to have the confidence to exercise their discretion effectively. Defence counsel noted that, at least in part because of legal aid funding restrictions, there are fewer opportunities for counsel to junior on big cases.

More mentorship for junior criminal justice personnel across the board was seen as important to support the effective use of discretion.

Finally, there was agreement that strong judicial case management, as described by the panelists, makes a strong contribution to the efficiency of the system.

## Closing

In closing, the Honourable Raymond Wyant made remarks in appreciation of the organizing team for the Symposium adjourned. Participants expressed their thanks to George Thomson, who facilitated the Symposium for the tenth and final time.

The Symposium adjourned until 2019. The Eleventh National Criminal Justice Symposium is scheduled for January 17<sup>th</sup>-19<sup>th</sup>, 2019, in Winnipeg, Manitoba.

# Appendix 1: Participant list

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<b>Name</b>	<b>Title</b>	<b>Organization</b>
Nicholas Summers	Provincial Director	Newfoundland and Labrador Legal Aid Commission
Cyndria Wedge	Director of Prosecutions	Crown Attorneys' Office (PEI)
Honourable Pamela Williams	Chief Judge	Provincial Court of NS
Megan Longley	Executive Director	Nova Scotia Legal Aid Commission
Trevor McGuigan	Lawyer	Nova Scotia Criminal Lawyers Association
Philip Star, Q.C.	Lawyer	Pink Star Barro
Robin McNeil	Deputy Chief of Police	Halifax Regional Police Service
Karen Hudson, QC	Deputy Minister and Deputy Attorney General	NS Department of Justice
Jennifer Llewellyn	Professor	Schulich School of Law, Dalhousie University
L'honorable Danielle Côté	Juge en chef adjointe	Cour du Québec
L' honorable Patrick Healy	Juge	Quebec Court of Appeal
L'honorable Héleine Morin	Juge	Cour du Québec
Frédéric Bellemare	Inspecteur	Service de police de la Ville de Laval
Me Francis Brabant	Avocat	Sûreté du Québec
Didier Deramond	Directeur général, ADPQ	Association des Directeurs de Police du Québec
Mario Harel	Directeur	Service de Police de Gatineau
Martin Hébert	Inspecteur	Sûreté du Québec
Patrick Lalonde	Assistant-directeur	Service de police de la ville de Montréal
Me Chantal Couturier	Sous-ministre associée - services de justice	Ministère de la Justice
Me Frédéric Maheux	Directeur du Bureau de la sous-ministre	Ministère de la Justice
Me Denis Marsolais	Administrateur d'État et coordonnateur gouvernemental	Ministère de la Justice
Me Hélène Mathieu	Procureure aux poursuites criminelles et pénales	Direction des Orientations et Politiques/ Ministre de la Justice du Québec
Me Pierre Nadeau	Avocat	Ministère de la justice Québec

Me Audrey Turmel	Avocat	Ministère de la Justice
Me. Nicolas Abran	Procureur aux poursuites criminelles et pénales	Directeur des poursuites criminelles et pénales
Me Robert Benoit		Directeur des poursuites criminelles et pénales
Me Chloé Rousselle		Directeur des poursuites criminelles et pénales
Cal Corley	Chief Executive Officer	Community Safety Knowledge Alliance
François Daigle	Associate Deputy Minister	Department of Justice Canada
Charlotte Fraser	Principal Researcher	Department of Justice Canada
Sam Erry	Deputy Minister – Correctional Services	Ministry of Community Safety and Correctional Services
Dr. Todd Foglesong	Professor	c/o Munk School of Global Affairs
Phaedra Glushek	Director and General Counsel	Department of Justice Canada
Steve Mihorean	Director General	Criminal Justice System Review Dept. of Justice Canada
Kimberly Murray	Assistant Deputy Attorney General - Aboriginal Justice	Ministry of the Attorney General, Ontario- Aboriginal Justice Division
Lynn Norris	Assistant Deputy Attorney General - Modernization Division	Ministry of the Attorney General
George M. Thomson		National Judicial Institute
Matthew Torigian	Deputy Minister of Community Safety and Correctional Services	Ministry of Community Safety and Correctional Services
Sean Tout	Inspector, Executive Liaison to Deputy Minister of Community Safety	Ministry of Community Safety and Correctional Services
Dr. Justin Piché		University of Ottawa
Kathleen Roussel	Directrice des poursuites pénales	Public Prosecution Service of Canada
Howard Sapers	Independent Advisor	Ministry of Community Safety & Correctional Services
Michael Waby	Executive Director - Criminal Justice Modernization	Ministry of the Attorney General, Modernization Division
Breese Davies	Defence Counsel	Breese Davies Law
David Field	CEO	Legal Aid Ontario
John McCamus	Professor	Legal Aid Ontario
David McKillop	VP-Policy, Research & External Relations	Legal Aid Ontario

Apple Newton Smith	Vice President	Criminal Lawyers Association
John Norris	Defence Counsel	John Norris Barrister
Jill Presser	Lawyer	Presser Barristers
Jonathan Rudin	Program Director	Aboriginal Legal Services
William Trudell	Lawyer	William Trudell Professional Corporation
Kevin Brosseau	D/Commr.	RCMP
Myron Demkiw	Staff Superintendent	Toronto Police Service
Graham Symington	Superintendent	Peel Regional Police
Susan Kyle	Assistant Deputy Attorney General - Criminal Law Division	Ministry of Attorney General - Ontario
Honourable Peter DeFreitas	Associate Chief Justice	Ontario Court of Justice
Honourable Aston Hall	Regional Senior Justice	Ontario Court of Justice
Honourable Lise Maisonneuve	Chief Justice	Ontario Court of Justice
Honourable Richard Schneider	Justice	Ontario Review Board
Sharon Nicklas	Regional Senior Justice	Ministry of the Attorney General
Honourable Raymond Wyant	Judge	Provincial Court of Manitoba
Honourable Margaret Wiebe	Chief Judge	Provincial Court of Manitoba
Bruce Gammon	Director	Legal Aid Manitoba
Chad Lins		MNP
David Thorne	Senior Manager, Consulting Services	MNP
Michele Jules	Crown Attorney	Manitoba Prosecution Service
James (Jim) Scott	Lawyer	Scott & Beaven Law Office
John Williams		
Dale McFee	Deputy Minister	Corrections and Policing, Ministry of Justice
Bob Aloneissi	Lawyer	Beresh Aloneissi O'Neill
Deborah R. Hatch	Defence Counsel	Hatch McClelland & Moore
Honourable Joanne Durant	Assistant Chief Judge	Provincial Court of Alberta
Eric Tolppanen	ADM Crown Prosecution	Alberta Justice and Solicitor General

Kevan Stuart	Superintendent	Calgary Police Service
Rhaea Bailey	Manager, Indigenous Services	Legal Services Society
Mark Benton Q.C.	Executive Director	Legal Services Society of British Columbia
Richard Fowler, Q.C.	Defence Counsel	Fowler & Blok
Celeste Haldane	Board Chair, Chief Treaty Commissioner	Legal Services Society of British Columbia
Michael Smith	Managing Lawyer, Appeals	Legal Services Society
Allan Castle	Dr.	Coordinator, BC Justice Summits
James Deitch	Executive Director	Ministry of Justice
Peter Juk	Assistant Deputy Attorney General	BC Prosecution Service
Greg DelBigio	Barrister	Greg P. Delbigio, QC
Alison MacPhail	Vice Chair	Legal Services Society, BC
Mark Miller	Chief Executive Officer	John Howard Society
Douglas White	Aboriginal Leader	BCAJC
Robert Downie	Chief Constable	Saanich Police Department
Honourable Thomas Crabtree	Chief Judge	Provincial Court of British Columbia
Susan E. Wishart	Associate Chief Judge	Provincial Court of British Columbia
Michael Jeffrey	Chief Superintendent	RCMP
Lindsay Lord	CEO	John Howard Society Thompson Region
Jamie Zettler	Chief Superintendent	RCMP

# Appendix 2- Symposium materials

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## National Justice Symposium (NJS) recommendations: *Jordan*, efficiency, effectiveness, and delay

### Context

The National Justice Symposium (NJS) meets annually to discuss justice-related topics and make recommendations for reform. The primary purpose of these symposia is to allow influential members of the system to share, off the record, candid perspectives on and solutions to the challenges of fashioning a responsive, accessible, and accountable criminal justice system. The NJS in 2018 will focus on *Jordan* issues, and issues related to efficiency and effectiveness. In preparation for the 2018 meeting, this document summarizes recommendations from the past NJS meetings that speak to efficiency and effectiveness.

### The summary of recommendations

While NJS recommendations may target specific processes and specific populations caught up in the criminal justice system, this summary focuses on recommendations for what the criminal justice system can do to combat (in)efficiency, (in)effectiveness, and delay. A broad reading of the historical recommendations is taken when identifying material which may be relevant to the 2018 NJS discussion.

Across all of the symposia, recommendations vary in their details and their potential targets. Some recommendations may catalogue ideas, while others may spell-out a specific reform. There are often recommendations about coordination among silos, the need for research and analysis, and the need for data. There are also recommendations for specific policy/law reforms, the use of technology, specialization, and new legal processes.

[Table 1](#) summarizes a number of recommendations that have been articulated across the NJS reports. The table catalogues a number of different recommendations based on where the reform may take place. In some instances, reform is located in a particular legal process or player, while in others, reform may touch all of the criminal justice system.

Following Table 1, a [List of Recommendations](#) summarizes recommendations based on each of the final reports from the NJS symposium. While Table 1 captures and organises the recommendations, the List of recommendations includes some details not presented in Table 1.

The list also allows readers to pinpoint the source of NJS recommendations from each symposium.

Table 1: Summary of recommendations from all Symposia

<p>Reform for all parts of the criminal justice system or for all criminal justice system players</p>	<ul style="list-style-type: none"> <li>• Share information on best practices and information sharing about criminal justice system issues more generally;</li> <li>• Break silos and enhance partnerships;</li> <li>• Improved public knowledge, education, and awareness;</li> <li>• Simplification of the justice system;</li> <li>• Interdisciplinary education;</li> <li>• Create holistic approaches;</li> <li>• Respect and support for Indigenous restorative justice approaches;</li> <li>• Establish local and provincial criminal Justice committees as a collaborative management tool;</li> <li>• Innovation in the system’s approach to administration of justice offences, such as subjecting violations to administrative rather than criminal process;</li> <li>• Address risk aversion with: joint educational programming; an environment that encourages the exercise of discretion; engaging more experienced practitioners; real-time consultation between prosecutors and police (on bail decisions); policies that favour release; promoting and financially supporting community alternatives;</li> <li>• Training to identify appropriate alternatives and to triage people to the most appropriate services;</li> <li>• Insure meaningful public inclusion in key decisions about the vision, values, and goals of the criminal justice system;</li> <li>• Strong linkages to community and other systems; and</li> <li>• Commitment to learning</li> </ul>
<p>Recommendations for front-end criminal justice processes</p>	<ul style="list-style-type: none"> <li>• Expand/encourage wide range diversion and equal justice initiatives, or meaningful and well elaborated options for diversion; investment in our ability to divert people to supportive programming before the courts are engaged;</li> <li>• Encourage early dispositions;</li> <li>• Improved criminal investigations and communication between police and prosecutors;</li> <li>• Crown should be involved to assess the viability of a conviction at pre-charge stage;</li> <li>• Improved police-prosecution cooperation; and</li> <li>• Joint police and prosecution teams to provide early legal and strategic advice and to review, both major and routine case files</li> </ul>

<p>Recommendations for technology</p>	<ul style="list-style-type: none"> <li>• Make greater and more effective use of information technology;</li> <li>• Facilitate electronic disclosure;</li> <li>• Implement electronic court booking;</li> <li>• Standardize prosecution briefs and electronic disclosure; and</li> <li>• Increase the use of smart technology, case management, and electronic disclosure</li> </ul>
<p>Recommendations for legal counsel</p>	<ul style="list-style-type: none"> <li>• Early disclosure of information;</li> <li>• Collaboration relationships between police and Crown (<i>e.g.</i>, at the pre-charge stage);</li> <li>• Dedicated prosecution teams; and</li> <li>• On-site legal aid</li> </ul>
<p>Recommendations for the courts</p>	<ul style="list-style-type: none"> <li>• Increase alternative and panel jurors to replace lost jurors;</li> <li>• Judicial powers at the front end should be increased to better manage adjournments and better determine <i>Charter</i> issues;</li> <li>• Modify scheduling in court to use less resources;</li> <li>• Implement administrative court and compliance court to deal with case flow;</li> <li>• Empower the judiciary to intervene pre-trial in case management;</li> <li>• Appoint case management judges;</li> <li>• Provide special training for judges in mega trials;</li> <li>• Improved court administration and case management;</li> <li>• Judicial leadership for effective case flow;</li> <li>• Judicial Case management and more effective judicial pre-trials; and</li> <li>• Bail: establish bail committees; use specialized bail courts, police, prosecutors, legal aid and duty counsel, and judicial officers; use only meaningful adjournments; provide early access to resources (telephone access); and encourage counsel to agree on the facts for the purposes of bail review to avoid the need for a transcript and further delay</li> </ul>
<p>Recommendations for data and measurement and research</p>	<ul style="list-style-type: none"> <li>• Clearly define goals and standards;</li> <li>• Create a framework and meaningful performance measures on which to evaluate the system;</li> <li>• Successful performance measurement includes: collaboration, transparency, and available and reliable data. These principles can be useful when it comes to measuring efficiency, effectiveness, and delay in the criminal justice system;</li> <li>• Sustained commitment to research is needed;</li> <li>• Appropriate, well-managed information sharing at the aggregate and individual level; and</li> </ul>

	<ul style="list-style-type: none"> <li>• Reimagine the criminal justice system response to the vulnerable requires thinking beyond existing frameworks and institutional approaches</li> </ul>
<p>Recommendations for law reform</p>	<ul style="list-style-type: none"> <li>• Law reform on mega-trials;</li> <li>• Codify preliminary motions with the same evidence;</li> <li>• Disclosure reform;</li> <li>• The repeal of mandatory minimums currently in statute except for murder, or alternatively, if other mandatory minimums are retained, provide for clear discretion to depart from the minimums in appropriate circumstances;</li> <li>• Legislative support for restorative justice, embedded in the Principles section of the <i>Criminal Code</i>; and</li> <li>• Empowering courts to order a referral to a restorative justice process if the accused consents, and also allowing victims to request a restorative justice approach.</li> </ul>

## Themes identified from past Re-Inventing Criminal Justice Symposia

[provided in advance to participants]

*The Re-Inventing Criminal Justice Symposium meets annually to discuss criminal justice-related topics and make recommendations for reform. The primary purpose of these events is to allow influential members of the system to share, off the record, candid perspectives on and solutions to the challenges of fashioning a responsive, accessible, and accountable criminal justice system (criminal justice system).*

*The 2018 Symposium will focus on Jordan issues as well as on issues related to efficiency and effectiveness of the system. Specifically, it will explore the following two themes: 1) creating a smarter, more focused criminal justice system; and 2) supporting strong, sustained leadership, guided by a shared vision for the role of the criminal justice system in Canada. These themes can inform discussions on combatting (in)efficiency, (in)effectiveness, and delay in Canada's criminal justice system.*

*In preparation for this year's Symposium, this document highlights five recurring themes that have emerged from the previous symposiums. These themes were identified as essential components to inspire transformative change and address Jordan, efficiency, and effectiveness issues. These include:*

- *collaboration and partnerships;*
- *awareness, understanding, and continual learning;*
- *increased options and flexibility;*
- *technology, innovation, and experimentation; and*
- *research, evaluation, and performance measurement.*

***Collaboration and Partnerships:*** *Throughout the symposiums, there have been repeated recommendations to break silos, increase collaboration and information sharing, and build partnerships both within the criminal justice system and with other systems (e.g., health, social services) and stakeholders (e.g., community, business) to ensure a holistic approach to addressing criminal justice system issues. Concrete examples discussed include: 1) increasing front-end communication and collaboration between police and prosecution before decisions are made; 2) encouraging more multidisciplinary community "hub" models; and 3) creating collaborative programs with the health system.*

***Awareness, understanding, and continual learning:*** *The need for continual education has also been discussed at past symposiums, both for the public and for those working in the criminal justice system. With respect to public education, previous symposiums have signaled the need to improve Canadian's awareness and understanding of the criminal justice system, its successes, and its failures. For practitioners, recommendations made to improve education included: 1) more training and guidance for Crown and defense counsel on substantive issues such as long and complex trials and unrepresented accused; 2) more general interdisciplinary education (e.g., addictions, mental health, etc.); and 3) training and information on alternatives to the criminal justice system.*

**Increased options and flexibility:** Past symposium discussions have underscored the inflexibility of the current criminal justice system in many areas (e.g., legislative, culture). Numerous recommendations have been made to increase availability and use of diversion and alternative options to incarceration. It has been noted that supporting alternatives to the system requires many things: 1) the development and implementation of meaningful and well-elaborated options; 2) the allocation of sufficient resources; 3) the ability to identify appropriate alternatives for each case; and 4) the provision of adequate training on these alternatives. Increased options need to have the flexibility to adapt to the individual and local community circumstances.

**Technology, innovation, and experimentation:** Throughout the symposiums, the importance of technology and innovation has been demonstrated through the numerous examples of innovative local approaches that have been operating with the view to transform the criminal justice system. Several recommendations have focused on using technology to improve everyday practices, such as electronic disclosure, electronic court booking, and overall smart technology and case management.

**Research, evaluation, and performance measurement:** Past symposiums have repetitively highlighted the limitations of the research and information currently available to support data-driven decision making. Overall, addressing these limitations was identified as a priority. The important contributions of research, evaluation, and performance measurement were highlighted in many areas including: developing goals and standards, creating frameworks to measure performance, assessing outcomes, and enhancing transparency, information sharing, and overall data quality.

During this year's symposium, you are invited to consider these themes as you further engage in discussions on improving the efficiency and effectiveness of the system.

# Appendix 3: List of Recommendations, National Justice Symposia 1-9

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## Criminal Justice in Canada: Initiatives, Issues, and Considerations

- Justice effectiveness Initiative: share information and best practices;
- Report of The Review of Large and Complex Case Procedures, November 2008: disclosure of information in Crown's possession and fostering collaborative relationship between the police and Crown pre-charge; judicial Case management; re-evaluate legal aid procedures; education and guidance for Crown and defence during long complex trials; and managing non-represented accused;
- Report from the FPT Working Group on Criminal Procedure, Summer 2008: law reform on mega trials;
- Law Reform Initiatives Relating to Mega Trial Phenomenon, fall 2007: increase alternative and panel jurors available to replace lost jurors during a trial; empower judiciary to intervene at the pre-trial stage to improve Case management; educate members of the bar on ethical and professional obligations;
- Report on Early Case Consideration of The Steering Committee, fall 2006: establish relationships between police and prosecutors; improve conduct of judicial release hearings; create case management teams for early Case resolution; and wide Range diversion programs and equal justice initiatives;
- Final Report On Mega-Trials Of The Steering Committee On Justice Efficiencies And Access To The Criminal Justice System, January 2005: appoint a case management judge; provide training to judges appointed to mega-trials; codify preliminary motions with the same evidence; compensation of defence counsel and mega-trial as reflective of extreme cost and resources; prosecutor role as advisor to investigators; review of the number of jurors required to reach a unanimous decision; law societies to provide counsel with guidance;
- Disclosure Reform Consultation Paper, 2004: facilitate electronic disclosure; specialized proceedings on disclosure;
- Addressing Inefficiencies in the Criminal Justice Process: A Preliminary Review, 2008: national and international approaches that are holistic contributes to the best success in efficiency reform; clearly define goals and standards; accountability mechanisms and feedback; improved court administration and case management; improved criminal investigations and communication between police and prosecutors; encouragement of diversion and early disposition; re-evaluate and better use pre-trial processes; focus on trial and sentencing and implement problem solving court;
- A Guide to Arraignment, Compliance and Administrative Court; Criminal Process Front-End Reforms: reform pilot projects to decrease delay; implement administrative court and compliance court to deal with case flow; and
- Project Charter, Court Case Management Program, 2008: modify scheduling to only use necessary resources; schedule time with judges for meaningful activities; implement

electronic court booking; reduce of Crown administrative duties; and facilitate resolution early in the court process.

- Alberta Summit on Justice, 1999: Improved public knowledge, education and awareness; simplification of the justice system; enhanced partnerships; increased funding;
- Pre-trial Coordination Protocol: informing accused of rights to counsel; meaningful discussion regarding counselling and diversion; pre-plea comprehension inquiry; and “certificate of trial readiness” before trial;
- Justice on Target: dedicated prosecution; on-site legal aid; and
- Newfoundland Labrador’s Report of the Task Force on Criminal Justice Effectiveness, 2008: appear in court after two weeks instead of 6-8 weeks; concise and specific legal aid information; timely disclosure of information; crown should be involved to assess the viability of a conviction at pre-charge stage; and judicial leadership for effective case flow.

#### Re-inventing Criminal Justice: A Continuing Conversation

- Joint police and prosecution teams to provide early legal and strategic advice and to review, both major and routine case files
- Standardized prosecution briefs and electronic disclosure
- Make greater and more effective use of information technology
- Judicial powers at the front end should be increased to better manage adjournments and better determine *Charter* issues
- Judicial Case management and more effective judicial pre-trials
- Mechanisms for carrying over judicial decisions made in earlier proceedings.
- Interdisciplinary education
- Establish local and provincial criminal Justice committees as a collaborative management tool
- The value of alternative measures and problem-solving approaches

#### Re-inventing Criminal Justice: The Third National Symposium

- There is support for disclosure reform, and disclosure could be improved by: increasing police access to prosecutors; and improved police-prosecution cooperation

#### Re-inventing Criminal Justice: The Fourth National Symposium (Bail & Remand)

- Emphasis on the importance of the early stage in the criminal proceeding and the need to allocate resources at the front-end of the criminal justice system process
- The issue of risk aversion: recommendations for joint educational programming; an environment that encourages the exercise of discretion; engaging more experienced practitioners; real-time consultation between prosecutors and police (on bail decisions); policies that favour release; promoting and financially supporting community alternatives; exchanging information about best practices nationally
- The issue of delay: establish local bail committees; increase the use of smart technology and case management and electronic disclosure; use specialized bail courts, police, prosecutors, legal aid and duty counsel, and judicial officers; use only meaningful adjournments; provide early access to resources (telephone access); and encourage counsel to agree on the facts for the purposes of bail review to avoid the need for a transcript and further delay

### Re-inventing Criminal Justice: The Fifth National Symposium (Mental Health)

- Consider diversion in every stage of the criminal process, where appropriate
- Training as recommended to identify appropriate alternatives and provide training as the most effective way to triage people to the most appropriate services
- Provide adequate resources for diversion programs
- Careful consideration should be given to the conditions imposed on release from custody to avoid setting people up to fail

### Re-inventing Criminal Justice: The Sixth National Symposium (Public Confidence)

- Generally, there remains a lack of coordinated, accessible, on time information about the criminal justice system and its outcomes, so ensure meaningful public inclusion in key decisions about the vision, values, and goals of the criminal justice system. This involves engaging the public throughout the criminal process, not only at its conclusion, with a particular focus on issues that give rise to public concern (*e.g.*, fairness, delay...)
- Lack of performance measurement: create a framework and meaningful performance measures on which to evaluate the system

### Re-inventing Criminal Justice: The Seventh National Symposium (Performance Measurement)

- The symposium on performance measurement identifies success factors which include: collaboration, transparency, and available and reliable data. These principles can be useful when it comes to measuring efficiency, effectiveness, and delay in the criminal justice system.

### Re-inventing Criminal Justice: The Eighth National Symposium (Vulnerable Populations)

- There may be opportunities to share information and information for better outcomes for vulnerable people
- Strong linkages to community and other systems and a commitment to learning can avoid the unnecessary criminalization of vulnerable peoples
- Meaningful and well elaborated options for diversion
- Effective responses to the vulnerable require criminal justice system leaders to engage other systems seriously and at the highest level (no silos)
- Sustained commitment to research is needed to understand vulnerability and the effectiveness of criminal justice system responses
- Reimagine the criminal justice system response to the vulnerable requires thinking beyond existing frameworks and institutional approaches
- Effective responses must include increased to current levels of legal aid funding
- Appropriate, well-managed information sharing at the aggregate and individual level is key to progress on vulnerabilities

### Re-inventing Criminal Justice: The Ninth National Symposium (Sentencing)

- Investment in our ability to divert people to supportive programming before the courts are engaged, through expanding police knowledge and capacity to divert, support for health and social services and resources, and building additional community capacity; Restorative Justice can support both an investment in supportive programming as well as community coordination models such as the 'hub' approach.
- Respect and support for Indigenous restorative justice approaches

- The repeal of mandatory minimums currently in statute except for murder, or alternatively, if other mandatory minimums are retained, provide for clear discretion to depart from the minimums in appropriate circumstances.
- Legislative support for restorative justice, embedded in the Principles section of the *Criminal Code*.
- Empowering courts to order a referral to a restorative justice process if the accused consents, and also allowing victims to request a restorative justice approach.
- Innovation in the system's approach to administration of justice offences, such as subjecting violations to administrative rather than criminal process.