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## **Using Indicators to Help Improve the Justice System**

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CRIMINAL JUSTICE POLICY**

## 1. Introduction

Every year the Symposium focuses on a different aspect of reinventing and improving the criminal justice system. This year's theme is the important question of the use of various forms of systematic measurement to identify the need for reforms, to measure the impact of new initiatives, and to test new ideas and solutions. This topic cuts across many of the themes we have discussed over the last several years.

Some observers argue that, over the last two decades or so, we have gone through a “measurement revolution” in the fields of governance, justice, and the rule of law; something akin to the phenomenal transformations that took place in the fields of economics and public health one hundred years ago.<sup>1</sup> However, it seems that the field of justice lags behind these other sectors.

Technology makes it possible to digitalize, store, analyze and use administrative and other data on a very large scale and at fairly low cost. Some of this data has been used to improve policing strategies, to improve court scheduling, to assign caseloads, to develop sophisticated risk assessment tools, to facilitate parole decision making, to measure cost-efficiency, and even to increase the overall accountability and transparency of the justice system. It is fair to say, however, that we have not fully put this enormous capacity to the service of criminal justice reforms.

Measuring is key to reinventing justice. Justice and rule of law indicators are useful tools to evaluate performance, draw attention to issues, establish benchmarks, monitor progress, and evaluate the impact of interventions or reforms. Indicators, together with other monitoring and evaluation mechanisms, are essential to providing feedback<sup>2</sup> to policy makers and reformers. When made public, these indicators may contribute to the greater transparency and public accountability of the justice system.

All over the world including Canada, data gathering systems have been developed to monitor aspects of the justice system, its significant components, and in some cases, the system as a whole. Some of these initiatives - which will be discussed later in this paper as well as during the symposium - have been

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<sup>1</sup> Botero, J. C, Martinez, J, Ponce, A, and C. S. Pratt (2012). “The Rule of Law Measurement Revolution: Complementarity Between Official Statistics, Qualitative Assessment and Quantitative Indicators of the Rule of Law”, in Botero, J. C., et al. (Eds.), *Innovations in Rule of Law*, The Hague Institute for Internationalisation of Law and the World Justice Project, pp. 8-11, p. 8.

<sup>2</sup> Feedback is a process through which information is collected, packaged and communicated so as to serve as a basis for learning, experimenting and decision-making within a system. Robust justice indicators are capable of generating a virtuous feedback loop that will support organizational change and reforms in a complex system such as the criminal justice system.

more successful than others and we can learn from both the successes and the challenges experienced.

We prepared this short paper as a quick introduction to the topic and to some of the key concepts that we will be discussing during the symposium.

## **2. Purpose of the symposium**

During last year's symposium, we articulated the link between the issue of performance measurement and that of public confidence in the criminal justice system. We deplored the lack of performance measures in the justice field and agreed that, in order to increase public confidence, performance measures should be made public.

The 2014 Symposium recommended that:

“The CJS should develop and implement understandable and meaningful performance measures. Senior leaders in the CJS should collectively discuss and agree on meaningful performance measures relating to the system as a whole and each aspect of it. The CJS will require a collaborative exercise to identify system goals and appropriate indices of performance, adjusted for different parts of the system and different communities. The public should have a voice in determining what will be measured and reported on. Once the goals and indices of performance are agreed upon, there should be collaborative cross-system commitment to meeting them. This should include peer review and mentoring as a component of evaluating performance. To increase public confidence, the results of performance audits should be made publicly available in an easily understandable form.” (Recommendation #4)

The purpose of this year's symposium is not to define whether or not certain specific indicators should be developed and implemented in Canada, whether nationally or provincially. It is not to come to an agreement on what should be measured, although we could certainly identify a few indicators that we all consider very important. Our goal during the symposium should be to arrive at a well thought through statement about the importance of measurement and the usefulness of broad indicators to monitor the impact of reforms on the performance of our justice institutions and the outcomes they achieved (in terms of justice, access to justice, fairness, resolution of conflict, public safety, etc.).

We should be able to include in our final statement some indications of the most useful approaches, promising practices (in Canada and abroad), pitfalls to avoid, etc. We should also be able to link this discussion to the other broad issues discussed previously during our symposia (public confidence in the system; transparency; accountability of public officials; etc.). Above all, our statement should be quite clear about the uses and usefulness of indicators in support of improving the criminal justice system and monitoring its relative “health” – its vital signs.

It may even be possible to express some consensus-based views on things such as: the usefulness of target-setting and benchmarking in relation to

performance measurement; the desirability of linking indicators to resource allocation or to institutional incentive structures; the relative importance of national justice indicators as opposed to provincial or local indicators; the problems associated (empirically, methodologically, logistically and politically) with using indicators to make comparisons between jurisdictions; and, the question of reconciling institutional indicators (e.g. police, prosecution, legal aid) with system-wide indicators.

### **3. Measuring the performance of the justice system as a whole or of its individual components**

A perfect agreement does not necessarily exist on what constitute an efficient and effective criminal justice process. Defining performance, efficiency and effectiveness in a manner which accounts for the different and independent roles of the various agencies and institutions involved is itself a challenge. Measuring any one of these dimensions, an obvious prerequisite to successful reforms, is an even greater challenge.<sup>3</sup>

Generally, in Canada and elsewhere, performance measurement has been used most frequently as a management tool for individual sectors of the justice system, whether police, prosecution, courts or corrections. There are a number of reasons for this, probably most importantly, the relative ease at that level of selecting measures, gathering data and developing strategies to influence performance.

Nonetheless, while it may be easier to develop and use indicators for individual sectors within the justice system, at the end of the day, it is critical to understand the overall impact of the initiatives of all the different sectors. It is completely possible – and unfortunately not unusual – that the individual parts of the system may be performing well according to their respective objectives while in some respects they still operate at cross-purposes. In the end, the system may not be achieving the objectives that the public expects. Just as in the old quip about the health system – “the operation was a complete success, but unfortunately the patient died” – the public, as well as the individuals who come into contact with justice system, whether as litigants, witnesses or jurors, care about the overall outcomes of the system, not just whether individuals or sectors have played their parts diligently.

It may thus be our conclusion that, although it may be more difficult to create indicators for the system as a whole, and to devise strategies to influence those indicators, this is the approach that will ultimately serve the justice system the best. System-wide indicators allow us to think about and stay focused on the justice system as a whole, rather than looking only at the various sectors in isolation. This is particularly critical as we come to recognize that significant justice system reform requires coordination and collaboration among the various

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<sup>3</sup> See: Dandurand, Y. (2014). “Criminal Justice Reform and the System’s Efficiency”, *Criminal Law Reform*, 25: 383-440, p. 385.

sectors in order to moderate the potentially conflicting approaches and strategies adopted by each sector.

#### 4. Different kinds of indicators

Some initiatives have focused on monitoring the justice system's efficiency, including attempts to monitor the system's performance in achieving certain efficiency targets. Others have focused on measuring the system's outcomes, usually through measuring public perceptions and experiences of the justice system.

As well, there have been attempts to measure the performance of the system in relation to some of its basic values and objectives, for example, access to justice, or in relation to some normative national or international standards, for example, human rights standards. Indicators of human rights can be useful in articulating and advancing claims on duty bearers and for formulating policies and reforms that facilitate the realization of human rights.<sup>4</sup>

Finally, there have been initiatives that focused on measuring progress as a result of system reform initiatives, or towards objectives such as capacity building; in these instances, the data gathering systems were often developed either as a complement or an alternative to program evaluations.

An interesting example of indicators to monitor the impact of system-wide reforms is offered by Scotland where reform of the justice system has been placed at the heart of the Government's public service reform agenda. The country has adopted a National Performance Framework that contains high-level indicators of Scotland's performance including for the justice system. Below this level, the government has adopted a set of coherent indicators based on the expected justice outcomes, as well as the measurable benefits and outputs of the change programmes.

In 2012, the Government announced its Strategy for Justice.<sup>5</sup> The strategy includes a broad vision, three national outcomes, eight justice system outcomes, and 24 indicators designed to provide key information about the extent to which the system is achieving the desired outcomes (summarized in Appendix 2).

The entire scheme (including their definitions and some of the detailed data supporting them) can be found on the Scottish Government's Justice Dash Board.<sup>6</sup> This Justice Dashboard provides an overview of progress towards improving justice outcomes. It displays information on selected high-level

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<sup>4</sup> See: United Nations Human Rights (2012). *Human Rights Indicators – A Guide to Measurement and Implementation*. New York and Geneva: United Nations Human Rights.

<sup>5</sup> Scottish Government (2012). *The Strategy for Justice in Scotland*. Edinburgh: The Scottish Government. <http://www.scotland.gov.uk/Resource/0040/00401836.pdf>

<sup>6</sup> <http://www.scotland.gov.uk/About/Performance/scotPerforms/partnerstories/Justice-Dashboard>

indicators for each of the eight justice outcomes within the overarching Justice Strategy.

This is a good example of how these elements all link together, starting with a vision for the system, then identifying national objective, then specific objectives for the justice system, and finally indicators which can help us assess whether the institutions, programs and policies which we have in place are helping us achieve the over-arching vision.

Scotland also has performance indicators for the police, sector, found in the Scottish Policing Performance Framework (SSPF) that reflect the breath and variety of policing activity across the country. An annual report is produced which does not attempt to identify causes for any observed trend, but simply offers a starting point for identifying and discussing trends, best practices, and areas for improvements. There are 38 indicators, grouped under the broad topics of service response, public reassurance and community safety, criminal justice and tackling crime, sound governance and efficiency, and context measures (ie basic data collected by police departments)<sup>7</sup>

Another interesting example of a process to develop justice indicators is the work currently undertaken in British Columbia. As part of a strategic plan for the justice and public safety sector a process is in place to develop and implement a comprehensive set of performance indicators to monitor progress in addressing the "performance gaps" identified, after consultations, by the province's Justice and Public Safety Council.<sup>8</sup>

In New Zealand, the Ministry of Justice adopted a Justice Performance Framework based on fairly straight forward indicators that are measured annually so that trends and the direction of change may be identified.<sup>9</sup> The New Zealand Police also uses of set of simple but fairly comprehensive performance indicators. In both cases, the performance data are publicly accessible on the web and in annual reports.<sup>10</sup>

Another very interesting initiative, is that of the United Nations Department of Peace Keeping Operations (DPKO) and United Nations Office of

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<sup>7</sup> Scottish Government. *Scottish Policing Performance Framework*.  
<http://www.scotland.gov.uk/Topics/Statistics/Browse/Crime-Justice/PoliceSPPF>

<sup>8</sup> British Columbia Justice and Public Safety Council (2014). *Strategic Plan for the Justice and Public Safety Sector - April 2014 to March 2017*. Victoria: Ministry of Justice of British Columbia. [http://www.justicebc.ca/shared/pdfs/Strategic\\_Plan\\_2014.pdf](http://www.justicebc.ca/shared/pdfs/Strategic_Plan_2014.pdf)

<sup>9</sup> New Zealand, Ministry of Justice (2013). *Justice Performance Framework*.  
<http://www.justice.govt.nz/publications/global-publications/s/statement-of-intent-20112014/what-we-will-do#our-performance-framework>

<sup>10</sup> New Zealand Police Key Performance Indicators 2013.  
<http://www.police.govt.nz/about-us/publication/new-zealand-police-key-performance-indicators-2013>

See also: New Zealand Police (2013). *Annual Report 2012-2013*.  
<http://www.police.govt.nz/sites/default/files/publications/annual-report-2013.pdf>

Commissioner on Human Rights (OHCHR) to measure change over time in the implementation of the rule of law, within the criminal justice system, in post-conflict situations. Recognizing that the rule of law is a fundamental aspect of peace building and related efforts to rebuild credible criminal justice institutions, the *United Nations Rule of Law Indicators* (135 in total, organized in 25 distinct groups) are applied to measure four key dimensions of criminal justice institutions: performance; integrity, transparency and accountability; treatment of members of vulnerable groups; and, institutional capacity.<sup>11</sup> The indicators have been implemented in Haiti, Liberia, South Sudan, and more recently in Afghanistan.

In all of these initiatives, “indicators” of different kinds were identified as being relevant to understanding how the system is functioning or monitoring the impact of new initiatives, with the relevant data being gathered as systematically as possible.

In 2005, the Canadian Centre for Justice Statistics published a report on Criminal Justice Indicators. It includes performance indicators which it defined as “information useful in assessing how the components of the criminal justice system and the system overall are performing”.<sup>12</sup> The report suggested that performance measures are most useful when placed in the context of goals or outcomes of the criminal justice system. The report presented a number of performance indicators where the data is available in Canada, organized according to the following five general goals of the criminal justice system: (1) public order, safety and national security through prevention and intervention; (2) offender accountability, reintegration and rehabilitation; (3) public trust, confidence and respect for the justice system; (4) social equity and access to the justice system for all citizens; and, (5) victim needs served.

## 5. Choosing indicators

There are of course all kinds of useful justice indicators. Many of them have focused on the following dimensions:

- Access to justice – social equity – regional accessibility – equal access;
- Compliance with standards or targets;
- Public confidence – public trust & respect;
- Public safety – public order - fear of crime;
- Probity and integrity;

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<sup>11</sup> DPKO – OHCHR (2011). *The United Nations Rule of Law Indicators – Implementation Guide and Project Tool*. New York: The United Nations.  
[http://www.un.org/en/events/peacekeepersday/2011/publications/un\\_rule\\_of\\_law\\_indicators.pdf](http://www.un.org/en/events/peacekeepersday/2011/publications/un_rule_of_law_indicators.pdf)

<sup>12</sup> Gannon, M., Mihorean, K., Beattie, K., Taylor-Butts, B. and R. Kong (2005). *Criminal Justice Indicators - 2005*. Ottawa: Statistics Canada, Canadian Centre for Justice Statistics (catalogue no. 85-227-XIE), p. 11, <http://publications.gc.ca/Collection-R/Statcan/85-227-XIE/0000585-227-XIE.pdf>

- Efficiency and effectiveness;
- Crime reduction;
- Responsiveness to change<sup>13</sup>;
- Sentencing, reliance on imprisonment, and prison overcrowding;
- Offender accountability – reintegration - prevention of recidivism;

There rarely is an immediate consensus about which performance indicators should be used. The justice system is a multifaceted system with a number of different objectives. For example, defence counsel may express concern that government is too concerned with efficiency, which they believe may come at the expense of individual rights or access to justice. However both access to justice and efficiency are important.<sup>14</sup> Different indicators are needed for different purposes, and they are not exclusive.

In our view, a good justice indicators system should:

- Be multidimensional (capture complexity)
- Be value-based (that is, link to the core values of the justice system)
- Have a limited number of specific performance measures (either with targets/benchmarks or not)
- Use measures that are relatively uncontroversial and represent in clear terms what the system is intended to deliver
- Offer sensible feedback to managers and policy makers
- Make sense to the public
- Ensure that indicators are measured regularly and consistently over time to capture change
- Ensure that indicators are developed in an inclusive and consultative manner, but are measured or verified independently

The choice and the crafting of valid indicators is not a simple task. When it is dictated by the data that is already available, the choices are limited and the results can be misleading. For example, there usually is a lot of interest in using data on pre-trial detention, either as a measure of human rights, system efficiency, prison overcrowding, or access to justice. The two most commonly used indicators are the percentage of the total prison population held (on a given day) while awaiting trial or a disposition of their case, and the rate of pretrial detainees per 100,000 population. However neither measure gives any information about the reasons for pre-trial detention. As we found at an earlier

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<sup>13</sup> For example, an indicator measuring whether the membership of a police force is keeping with changes in the ethnic composition of the community it serves.

<sup>14</sup> For an interesting discussion on how to frame and define access to justice metrics and how to develop robust and credible access to justice indicators, see: Canadian Bar Association (2013). *Access to Justice Metrics - A Discussion Paper*. [www.cba.org/CBA/Access/PDF/Access\\_to\\_Justice\\_Metrics.pdf](http://www.cba.org/CBA/Access/PDF/Access_to_Justice_Metrics.pdf)

symposium, increases in pre-trial detention can be because of police decisions with respect to who is detained initially, subsequent judicial decisions, or delay in disposing of matters, leading to more time spent in pre-trial custody. Folgesong and Stone argue that: "Indeed, it is possible that the effort to reduce pretrial detention in developing countries may actually be hindered by the indicator most commonly used there: the proportion of prison inmates on any given day that is not sentenced."<sup>15</sup> They suggest that in many instances data collected on prison exit samples could generate a much more reliable indicator, by focusing on the duration of detention.

## 6. Measuring performance in relation to the core values of the justice system

It often said in relation to performance measurement that it is important to measure what we value, in order that we don't end up valuing only what we measure. And some of the most fundamental values of the justice system can be difficult to measure, for example fairness or access. This is why it is critically important to understand how we might be able to measure things that give us important information about the elements of the justice system that we care about, even if we cannot measure them directly.

This is not just a justice system problem. There is no area where we can always measure everything we really need to know. For example, we might be interested in knowing how quickly water is evaporating from a container, and why it is happening. One might use the number of millimetres between two rings left at the top of a basin at different points of time as a valid indicator of water evaporation. This indicator, however, does not say anything about the amount of water that has evaporated or the reason why it did. If one repeats the measurement over fixed periods of time, one may be able to assess whether the evaporation process is accelerating or not, or whether it has stopped or been reversed.

Note that it does not inform us about how water is left in the basin, whether it really is water, or how much time we have before the basin is likely to be empty if the current rate of evaporation maintains itself. That indicator tells us something useful, but not everything that we may need to know. If you have no way of measuring the liquid in the basin without seriously disrupting the situation or simply do not have the means, this crude measure may still be useful. Using that measure may help you, for instance, to design and implement measures to influence the rate of evaporation (e.g., temperature control) and determine whether you are actually succeeding in doing so.

Similarly in the justice system, it is usually not possible to measure the desired outcome directly. Indicators are almost always *proxies* of the outcomes

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<sup>15</sup> Foglesong, T. and C. E. Stone (2011). *Prison Exit Samples as a Source for Indicators of Pretrial Detention*. Cambridge (MA): Program in Criminal Justice Policy and Management, Harvard Kennedy School.

or concepts they purport to measure. They are chosen and developed in order to capture and summarize information about fairly high-level concepts relating to important or desired characteristics of the criminal justice system, or of the reforms being introduced.

To varying degrees, indicators are removed and simplified from the outcome of interest in order to make it possible to measure them easily, frequently, and at affordable costs. Their value lies in the fact that they are expected to correlate with a desired outcome, but the correlation is rarely perfect. This is why it is usually preferable to use groups of indicators rather than a single indicator to measure any important aspect of the justice system.

For example, although data are routinely collected in most if not all Canadian jurisdictions about how a case proceeds through the court system, they will not by themselves indicate how well or poorly the court system is performing nor will they fully explain the reasons behind the different data trends being observed. We can get information about how many new cases come into the system every year, how many cases are disposed of, how long it takes to reach a disposition, how many court appearances were required, how many cases required a trial, etc. However the data do not tell us the reasons for the trends or whether the process has been appropriate. At best, the data may indicate areas requiring further investigation, or whether specific reform initiatives are influencing observed trends.

Unlike other forms of evaluation and measurement, high level indicators do not typically lend themselves to causal analysis. They may facilitate the formulation of tentative causal hypotheses about what is being observed at that level, but the testing of these hypotheses requires other means and different kinds of data.

Some values or objectives cannot be assessed purely from data. For example, in assessing the fairness of the court process, data can give us information about general trends, for example, about whether institutional parties, or plaintiffs, or men are more likely to be successful than individual parties, defendants or women. Data can also tell us about trends with respect to whether litigants are represented by counsel. However this represents an incomplete picture of fairness, and other sources of information need to be found.

## **7. Data sources**

There are usually several data sources from which one can derive a particular indicator. The choice of data tends to be entirely contextual. There is rarely only one correct choice: some data sources are more reliable than others; some data sources are more expensive to use; some are more readily available; and some are updated more frequently; etc. All data sources have the strengths and weaknesses: the secret is to understand those when choosing one course or another. Another useful approach is to simultaneously use different sources of data to measure the same element.

Surveys can be an important source of information. And while surveys are sometimes thought to provide information that is less objective and thus less reliable than data generated through other means, much depends on the questions asked and often on how and when they are asked. For example, if public survey respondents are asked about the functioning of the justice system, they may not have a lot of information on which to base that implied judgment. On the other hand, if a survey asks people who have been in court, whether as a defendant, accused, witness or juror, about their experience, the basis of their response is likely to be a more informed one.

Foglesong examined the use of surveys as the source of indicators of “public safety.” His recent paper describes several ways to manage the volatility of public perceptions of crime and insecurity, especially their susceptibility to influences over which governments have little or no control.<sup>16</sup> In his view, surveys can be sources of reliable insights about public safety as well as create incentives for governments to use their results. An example would be great here. Also, as most of us know, there now is considerable expertise in the conduct of victimization surveys and the methodology for doing is quite sophisticated. These surveys focus on the respondents’ experience of crime and contacts with the justice system. Victimization surveys produce robust data, measures of outcomes, on which reliable indicators of the criminal justice system’s performance can be based.

## **8. The best use of justice indicators**

Justice indicators cannot answer all of our questions and will never even come close to answering all of our information needs. They do not replace a proper assessment<sup>17</sup> of the system or an impact evaluation. They are only one tool in the tool bag of reformers and conscientious justice leaders.

However, we have to move away from the idea that justice indicators are to be used as some kind of “report card” on the system. A lot of people involved in the system fear that they will be held accountable for outcomes over which they (or even their own agency) have very little control. This is one reason why “justice indicators” rarely receive a lot of support the first time they are produced.

A more useful perspective is one where “justice indicators” are seen mainly as a way to monitor how the system is performing under changing circumstances, facing new challenges, and responding or not to our efforts to improve it. Indicators are really useful when they can measure change over time, with a reasonable degree of confidence. They are even more useful when they

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<sup>16</sup> Foglesong, T. (2014). *Better Servants of Development: Improving Surveys as Sources of Indicators of Public Safety*. Cambridge (MA): Program in Criminal Justice Policy and Management, Harvard Kennedy School.

<sup>17</sup> UNODC (2006). *Justice Assessment Toolkit*. New York: United Nations.

can be compared over time to changes observed through other key social indicators.

### ***a) Linking Indicators to Strategic Planning***

Understanding what is happening in the justice system is only the first step. The critical next step is for those working in the system to determine what steps should be taken to improve progress (or reverse any declines in performance). Ideally, the regular measurement of justice indicators should be integrated into the reform process and some kind of strategic framework for improving the justice system (possibly at different levels). A comprehensive set of justice indicators can support the kind of integrated planning at the system-wide level that is usually required to design and implement deeper criminal justice reforms.

## **9. Approaches to using indicators**

Jurisdictions that use data to measure performance sometimes relate indicators to or express them in the form of targets. In addition to simply monitoring changes over time, targets are set that the system or its different components must seek to achieve. Another related approach involves benchmarking the performance of the system (or one of its components) either against a comparable system or in relation to a stated norm or standard. The former allows one to compare the performance in one system, in relative terms, to that of a similar or comparable system to determine which system is doing better than the other. Finally, there have been attempts to use indicators as a basis for estimating the economic impact of improved performance<sup>18</sup>, as well as attempts to link the application of performance indicators to resource allocation.

A fair amount of work has been done in various parts of Canada to develop police performance indicators. The field is evolving fairly quickly, but as was observed in a recent study of Canadian police board views on the use of police performance metrics, sector-wide performance standards and indicators do not yet exist.<sup>19</sup> A very impressive review of international best practices in police

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<sup>18</sup> For example: van Djick, F. (2014). "Improved Performance of The Netherlands Judiciary: Assessment of the Gains for Society", *International Journal of Court Administration*, 6 (1): 1-17.

<sup>19</sup> Kiedrowski, J., Petrunik, M., Macdonald, T., and R. Melchers (2013). *Canadian Police Board Views on the Use of Police Performance Metrics*. Ottawa: Law Enforcement and Policing Branch, Public Safety Canada. Note that, for the purpose of the study, the authors defined what they saw as the seven dimensions of a "balanced" framework for measuring policing performance: "(1) reduce criminal victimization; (2) call adult and youth offenders to account in appropriate ways; (3) reduce fear of crime and enhance personal security; (4) increase safety in public spaces; (5) use financial resources fairly, efficiently, and effectively; (6) use of force and authority legitimately, fairly, and effectively; and, (7) satisfy citizen demands for prompt, effective and fair service.", p. 1.  
<http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/plc-vws-prfrmnc-mtrcs/plc-vws-prfrmnc-mtrcs-eng.pdf>

performance measurement was published by RAND's Center on Quality Policing.<sup>20</sup>

**a) Target Setting**

On the issue of setting efficiency or outcome targets to be achieved, there is a lot of useful research that should be reviewed carefully. During the symposium we will be reviewing the experience of Ontario's Justice on Target initiative, an initiative to address court delays and improve efficiency in the provincial criminal justice system. It was part of a strategy to encourage continuous improvement in the system's efficiency. Benchmarks or targets were established for case flow in a manner that took into account a case's complexity.<sup>21</sup> A system to measure and report progress towards these targets was developed. The progress is reported publicly in the Ministry of the Attorney General website.<sup>22</sup>

Currently there is little agreement on the value of target-based indicators and monitoring systems. There have been different experiences in Canada and abroad that deserve examination, keeping in mind that many governments already have implemented performance measurement systems for their various agencies (for example, they are required in BC under the Crown Corporations Service Plan Guidelines: "performance measures must be identified with associated targets and benchmarks").<sup>23</sup>

All performance measures have their limitations and may invite perverse and unintended consequences. In particular, an analysis of the behaviour flowing from target-driven performance measurement systems has shown that both individuals and organizations have engaged in "gaming", that is, finding ways to influence the outcome and make it appear that the target has been reached. Some argue that the unwitting creation of perverse incentives and behaviours is the inevitable by-product of target-based performance measurement and management.<sup>24</sup> The selection and crafting of the indicators to be measured can perhaps alleviate that problem.

Another potential way to reduce gaming and improving performance measurement is adopting a systems approach and to measure performance at the level of the wider system instead of at the level of each agency.<sup>25</sup>

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<sup>20</sup> Davis, R. C. (2012). *Selected International Best Practices in Police Performance Measurement*. Santa Monica: Rand Corporation, Center on Quality Policing. [http://www.rand.org/content/dam/rand/pubs/technical\\_reports/2012/RAND\\_TR1153.pdf](http://www.rand.org/content/dam/rand/pubs/technical_reports/2012/RAND_TR1153.pdf)

<sup>21</sup> Ministry of Attorney general of Ontario. *Benchmarks for Effective Criminal Courts*. <http://www.attorneygeneral.jus.gov.on.ca/english/jot/benchmarks.asp>

<sup>22</sup> See: <http://www.attorneygeneral.jus.gov.on.ca/english/jot/achievements.asp>

<sup>23</sup> British Columbia (2013). *Crown Corporation Service Plan Guidelines*. Victoria: Ministry of Finance, Crown Agencies Resource Office.

<sup>24</sup> Guilfoyle, S. (2011) "On Target?—Public Sector Performance Management: Recurrent Themes, Consequences and Questions", *Policing*, Volume 6, Number 3, pp. 250–260.

<sup>25</sup> *Idem*, p. 257.

Davis, in his review of best practices in police performance measurement, notes that:

“(…) it is important in designing a system of performance measures to keep in mind the possibility that the act of measuring may affect the behavior of officers in ways that are unintended and contradictory to agency goals. By employing a mix of outcomes and outputs, including survey measures in the mix of indicators, and adjusting indicators to make comparisons fairer, performance measures can become an effective tool to promote accountability and adherence to agency strategic goals.”<sup>26</sup>

There have been several police reform programmes, in different countries, directed at achieving various performance targets. Until 2010, Great Britain had implemented what was probably the most elaborate framework of police performance management in the world, together with a performance measurement framework.<sup>27</sup> In 2010, with the change in government, the framework was abandoned.<sup>28</sup>

In Great Britain, it was recently suggested that police forces have manipulated crime data in order to demonstrate that they have reached their targets. In January 2014, the UK Statistics Authority (UKSA) decided to strip PRC data (for England and Wales) of its National Statistics status. The House of Commons’ Public Administration Committee, in its April 2014 report, concluded that:

"HM Inspectorate of Constabulary’s inspection in 2013 into the Kent Police found clear evidence that targets are detrimental to the integrity of crime data. Numerical targets for individual police officers and police forces as a whole, based on PRC data, and set by senior police officers or Police and Crime Commissioners (PCCs), drive perverse incentives to misrecord crime, tend to affect attitudes and erode data quality. Some PCCs consider the perverse incentives created by targets to be so serious that they have dropped all targets. We applaud them. The attitudes and behaviour which lead to the misrecording of crime have become ingrained, including within senior leadership. This leads to the subordination of data integrity to target-chasing.

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<sup>26</sup> Davis, R. C. (2012). *Selected International Best Practices in Police Performance Measurement*. Santa Monica: Rand Corporation, Center on Quality Policing, p. 5.

<sup>27</sup> Some of the guidance material developed by the Home Office (U.K.) about the statutory police performance indicators and the implementation of the Policing Performance Assessment Framework has been archived, but it can still be consulted at:  
<http://tna.europarchive.org/20100419081706/http://www.police.homeoffice.gov.uk/performance-and-measurement/performance-assessment-framework/index.html>

<sup>28</sup> See: de Maillard, J. and S. P. Savage (2012). "Comparing Performance: The development of police performance management in France and in Britain", *Policing and Society*, 22 (4): 363-383.

This can present officers with a conflict between achievement of targets and core policing values.”<sup>29</sup>

The problem with the crime statistics went unnoticed for some time, in part because of the cessation of regular external audit of police force crime recording in 2007.

Similarly, the emphasis on measuring police performance in New York City is alleged to have led to crime statistics manipulation by the New York Police Department.<sup>30</sup>

All this also raises issues about the independence of the measurement process, about the need for data auditing, and whether the administrative data available for constructing key justice indicators remains reliable and credible.

### ***a) Benchmarking***

The related issue of the use of benchmarks is also worthy of some discussion. Many governments and agencies have already instituted systems based on benchmarking (as a form of rigorous performance management). For example, it is required in BC under the Crown Corporations Service Plan Guidelines to “identify appropriate benchmarks by reviewing the performance of other comparable organizations as a means to allow for what some might deem to be an objective comparison of performance”.<sup>31</sup>

The use of benchmarks established in one agency as a point of comparison to monitor the performance of other agencies brings with it the challenges of identifying and choosing appropriate comparatives and addressing discrepancies resulting from diverging measurement tools. The Northern Ireland Police Force which initially used benchmarking to compare the performance of different districts/stations eventually had to abandon that particular component of its performance measurement and management system.

### ***b) Linking Performance Indicators to Resource Allocation***

Another important question is whether justice indicators (or other performance indicators) ought to be linked to resource allocation, budgeting and the overall reward structure of our justice institutions. There are certainly many central government agencies and auditors who advocate in favour of that approach. If anything, it could be considered an emerging but already strong trend in western democracies. The idea of “paying for success” in government contracting is gaining momentum in several countries. In the U.K., for example, the funding of

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<sup>29</sup> U. K., House of Commons, Public Administration Committee (2014). *Fourth Special Report - Caught Red-handed: Why we can't count on Police Recorded Crime Statistics*, 1 April 2014, p. 3.

<sup>30</sup> See: John A. Eterno, J. A. and E. B. Silverman (2012). *The Crime Numbers Game: Management by Manipulation*. Boca Raton (FL): CRC Press.

<sup>31</sup> British Columbia (2013). *Crown Corporation Service Plan Guidelines*. Victoria: Ministry of Finance, Crown Agencies Resource Office.

private prisons and probation and social reintegration services is being linked to indicators of recidivism.<sup>32</sup>

On the other hand, there are also frequent complaints by justice system leaders, managers and practitioners that performance is not sufficiently reflected in resource allocation. A recent OECD study revealed that many member countries reported that performance data was “less influential” during budget cuts than budget expansion.<sup>33</sup> In its 2014 *Analysis of Performance Budgeting during Recent Fiscal Consolidation*, the federal Parliamentary Budget Officer (PBO) looked at whether targets were met or not and whether this affected budgets (over 3 years); it found no significant link between a department’s performance and its budget growth and financial resources had **not** been reallocated from low-performing to high-performing programs. In fact, the opposite appeared to be true: low-performing programs were actually more likely to get increased funding.<sup>34</sup>

### *c) Measuring Change over Time*

One of the most useful uses of justice indicators is probably based on comparisons of the indicators over time, or at least against some baseline data. By tracking performance over time, “indicators may spur reforms and strengthen government accountability”.<sup>35</sup> Indicators are most revealing when the same measure is tracked over time. Successive data collection periods make it possible to identify trends and to observe changes in various aspects of the justice system’s performance. High-level indicators may not always be particularly sensitive to short-term changes. The choice of high-level indicators should privilege “dynamic indicators”, indicators capable of capturing or revealing more subtle changes in performance.

## **10. Justice system acceptance of performance measurement**

There is still not universal acceptance of the usefulness of performance measurement of the justice system as a whole, particularly among the individuals on the ground in the various sectors that comprise the system. The many reasons for this resistance will perhaps be explored during the symposium.

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<sup>32</sup> U. K., Ministry of Justice, *Transforming Rehabilitation – A Strategy for Reform*, London, May 2013. See also: House of Commons Justice Committee (2014). *Crime Reduction Policies: A Co-ordinated Approach? – Interim report on the Government’s Transforming Rehabilitation Program*, 22th Report of Session 2013-14, London, 22 January 2014.

<sup>33</sup> Marcel, M. (2014). *Budgeting for Fiscal Space and Government Performance Beyond the Great Recession*. *OECD Journal on Budgeting*, 13 (2): 9-47.

<sup>34</sup> Shaw, T. and F. Wong (2014). *Analysis of Performance Budgeting During Recent Fiscal Consolidation*. Ottawa: Office of the Parliamentary Budget Officer, August 14, 2014.

<sup>35</sup> Parsons, J. and M. Thornton (2012). “Data as a United Nations Rule of Law Programming Tool: Progress and Ongoing Challenges”, in Botero, J. C., Janse, R., Muller, S. and C. S. Pratt (Eds.), *Innovations in Rule of Law*. The Hague Institute for Internationalisation of Law and the World Justice Project, pp. 21-23, p. 22.

As Chris Stone observed, in matters of government, indicators are instruments of power.<sup>36</sup> All justice system stakeholders are keenly aware of that fact. Botero and his colleagues expressed the view that the “most fundamental barrier appears to be a deeply rooted culture among government officers and practitioners in this field that is hostile to measurement”. “In all corners of the planet”, they added, “judges and lawyers often act as if they were allergic to numbers, or when these numbers are collected, they are neither systematically analysed nor publicly disclosed”<sup>37</sup>.

What is it about the delivery of justice by the courts, the performance of policing institutions, or prosecutorial practices that would make them so fundamentally different from economic or public health variables? We might suggest that some of the resistance is due to an appreciation that because the system is so complex, the significant outcomes of the justice system – public confidence, public safety, fairness, accessibility – do not depend on the actions of any one sector. Since people often worry that they will be blamed for the actions of others, it is easier to be measured on the effort and activities within one’s own sector rather than on whether those activities have led to meaningful change overall.

At the same time, this focus on one’s own limited area of responsibility can mean that no one takes responsibility for the system as a whole. As well, and as noted earlier, it means that there is no attention paid to the ways in which the different sectors can unwittingly undermine the conscientious efforts of the other sectors.

As a comparison, in the health field, there is longstanding acceptance of fundamental indicators of health, for example, mortality rates, child mortality rates, etc., even though clearly these are influenced by a variety of factors including those outside the health care system, for example income and poverty issues. However this does not detract from the efforts of the health care system to take steps to decrease these rates.

## 11. Conclusion

As mentioned during the symposium last year, justice indicators are often hard to define and difficult to implement. We must not lose sight of the fact that they are instruments of power and, almost always, provide a framework for accountability. They can affect the reward structure within the targeted institutions. They may negatively affect behaviour and operations. This does not

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<sup>36</sup> See : Christopher E. Stone (2011). *Problems of Power in the Design of Indicators of Safety and Justice in the Global South*. Cambridge (MA): Program in Criminal Justice Policy and Management, Harvard Kennedy School.  
<http://www.hks.harvard.edu/content/download/67426/1242514/version/1/file/Indicators-ProblemsofPower.pdf>. Stone argues that, therefore, indicators should be designed, from the bottom up, supporting local ambitions and building on the legitimate sources of authority close to the operations they seek to influence”.

<sup>37</sup> Botero et al., 2012, *op. cit.*, p 9.

negate their value. It only militates in favour of a careful approach to their implementation, something that the symposium can help ensure.

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## Appendix 1 - Definitions

*There is no perfect agreement on the definition of any of the concepts we will be discussing during the symposium. We may nevertheless find the following working definitions useful:*

**Benchmarks** are predetermined values of indicators that can be based on normative or empirical considerations. They provide the basis of a comparison between that predetermined (and in some cases desired) value and the observed value of an indicator.

**Combined indicators:** Combining indicators can be extremely useful in order to: (1) verify measurements by combining indicators measured by different types of data, and (2) obtain a multi-dimensional picture of a phenomenon by combining indicators that when put together provide “more than the sum of the parts”.

**Effectiveness** is the extent to which a programme or a system attains its objectives and expected accomplishments and delivers the desired outcomes.

**Efficiency** is a measurement of how well inputs (funds, expertise, time etc.) are converted into outputs.

**Impact** is the measurement of the sum of the significant effects of a programme or system, positive or negative, direct or indirect, intended or unintended, expected or unforeseen, on its beneficiaries and other affected parties.

**Index indicators** refer to sets of variables that, in combination, are meant to provide an indicator of certain phenomena, but where the behaviour of each single variable in the index does not necessarily or fully correspond to the behaviour of the phenomena in question.

**Outcome evaluation:** A selective exercise that attempts to systematically and objectively assess progress towards or the achievement of an outcome. It covers a set of related projects, programmes and strategies intended to bring about certain outcomes. It attempts to assess how and why outcomes are or are not being achieved.

**Output, outcome and system-wide impact indicators** refer to variables that measure different points in the chain of cause-effect relationships between a strategy and its system-wide impacts. Outputs are measures of an agency’s internal performance that correlates with desirable system outcomes. System outcomes are measures relevant to the goals and objectives of that system.

**Perceptual data** are usually, but not necessarily, data collected through statistical surveys in which people are asked about their views on topics such as security, satisfaction with police services, feelings safety. They can also be collected through focus groups, interviews with key informants, etc.

**Proxy indicator:** A proxy is a variable that is assumed to reflect the behaviour of the phenomena in question, and which thus can be used as a single indicator to measure change of the phenomenon. The assumed reflection may be based on theoretically verified correlations or on observed correlations not fully understood or theoretically verifiable. In some ways, however, all indicators can be said to be proxies.

**Qualitative data** refer to information that is used to exemplify an interpretation or an analysis, but which is not quantified. For example, “Progress achieved in getting the new anti-corruption legislation adopted and proclaimed” would be an indicator that would provide context to understand whether, for example, prosecution practices should already be expected to reflect the new legislative framework.

**Quantitative data** refer to all types of data that we can attach a measure to and which can be quantified in some way to support our analysis. Data can be measured on different scales (nominal, ordinal, interval, ratio). Depending on the scale used, different levels of statistical analyses become feasible.

## Appendix 2 - Summary of the Scottish Justice Dashboard

### Vision:

Our vision is of a justice system that contributes positively to a flourishing Scotland, helping to create an inclusive and respectful society, in which all people and communities live in safety and security, individual and collective rights are supported, and disputes are resolved fairly and swiftly

### National Outcomes:

1. We live our lives safe from crime, disorder and danger,
2. We have strong resilient and supportive communities where people take responsibility for their own actions and how they affect others, and
3. Our public services are high quality, continually improving, efficient and responsive to local people's needs.

### Justice Outcomes and Related Indicators:

1. We experience low levels of crime
  - Crime victimization rate (%)
  - Recorded crimes
  - Recorded offences
2. We experience low levels of fear, alarm and distress,
  - Perception of local crime stable or improving
  - Feeling safe walking alone after dark
  - Perceptions of antisocial behaviour fairly or very common
3. We are at low risk of unintentional harm,
  - Road deaths
  - Fire casualties
  - Drug related deaths
4. Our people and communities support each other, exercising both their rights and responsibilities,
  - Neighbourhood very good (%)
  - Hate crimes
  - Supportive communities
5. We have high levels of confidence in justice institutions and processes,
  - Confident system brings offenders to justice
  - Confident system deals with cases efficiently
  - Reported crime as share of total crime
6. Our public services are fair and accessible,
  - Confident all have access to the justice system if needed
  - Confident system isn't different depending on where you live
  - Drug and alcohol programs available within 3 weeks
7. Our institutions and processes are fair and accessible
  - Civil problems resolved (%)
  - Crime clear-up rates (%)
  - Average reconvictions
8. Our public services respect the rights and voices of users.
  - Confident system provides good standard of witness services
  - Confident system provides good standard of victim services
  - Confident police listen to the concerns of local people