

RE-INVENTING CRIMINAL JUSTICE:
THE FOURTEENTH NATIONAL SYMPOSIUM

FINAL REPORT

Virtual Symposium

March 25, 26 & April 9, 2022

Re-Inventing Criminal Justice: The Fourteenth National Symposium

“Post-Pandemic Opportunities in Criminal Justice”

Introduction

The Fourteenth National Criminal Justice Symposium was convened as a Canada-wide virtual event on March 25-26 and April 9, 2022.

The Symposium, with the generous support of the Canadian Association of Chiefs of Police and the Department of Justice Canada, is an annual forum for justice leaders to share candid, non-attributed perspectives, and solutions regarding the challenge of fashioning a responsive, accessible, and accountable criminal justice system. The Symposium topic – “Post-Pandemic Opportunities in Criminal Justice ” – drew approximately 100 justice leaders together from across Canada including criminal justice practitioners and professionals, Indigenous-serving organizations, non-profit executives, advocates, researchers, and other experts.

As in previous years, the Symposium was chaired by the Honourable Judge Raymond Wyant of the Manitoba Provincial Court and facilitated by Mr. Harold Tarbell.

Theme and intent

In March 2021, participants at the Thirteenth Symposium considered the effects of the Covid-19 pandemic on the Canadian system of criminal justice. It was clear to participants at that early stage that many of the changes occurring in the system were profound. The crisis had provoked a rapid response and strengthened key relationships, with many innovative and positive steps taken to preserve the functions and integrity of the system and the well-being of those involved. At the same time, some of the measures taken by the system’s institutions raised serious questions about access to justice for vulnerable people, fair and ethical process, and security.

In planning the Fourteenth Symposium, which was originally designed as an in-person gathering in January, the organizing committee was required by the Omicron variant wave to transition to a virtual event in the spring. The committee’s consensus was the pandemic remained a unique opportunity to highlight important interdependencies and opportunities in criminal justice, factors which were now better understood than 12 months before, and that renewed attention on the pandemic’s effects on the system was an opportunity that should not be missed. Building on operational experience of multiple subsequent waves of public health concern, and with the benefit of empirical data to shed light on pandemic-era trends and mitigation strategies, the Fourteenth Symposium was designed to consider pandemic-era developments which have been beneficial, developments which were not advantageous or had unintended negative consequences, and developments which require further experimentation or fine tuning.

The intent of the Symposium was not simply to discuss these issues, but to share the personal and institutional experiences of the participants, foster a commitment to effect meaningful change, encourage participants to provide local leadership among criminal justice system actors in their home provincial and territorial justice systems, and in doing so increase the likelihood that ideas for reform are both implemented and sustained. Accordingly, this report contains practical recommendations for action made by participants for the attention of those responsible for the administration of the criminal justice system at the federal, provincial, and territorial levels of government, and for the consideration of the public.

Agenda design March 25-26

The Symposium agenda for the first two days (March 25-26) was organized as set out below. On April 9, participants gathered subsequently to consider recommendations developed in draft from the discussions of March 25-26.

Session 1: Key justice trends in the pandemic

Participants heard two presentations providing important context about the empirical reality of the pandemic in two separate provincial systems, including changes in case volumes, custody counts, and other key patterns regarding the work of the system. Following the data presentations, a panel of operational representatives from different sectors discussed what these trends have meant in practical terms. Following these presentations, participants in small, professionally and geographically diverse groups considered the following questions:

1. What are the longer-term implications of the operational patterns revealed in the pandemic?
2. Other than the use of video, what policy or operational changes resulting from the pandemic in the past two years do you feel are promising and should be expanded/consolidated? Are concerning and require critical attention?
3. The pandemic has prompted richer and more frequent collaboration across the system to address shared problems. What have these collaborations looked like where you work? How can we sustain this way of working and avoid returning to a siloed approach?

Session 2: Policing and the broader justice system during the pandemic

For policing in the pandemic, operational norms were placed under stress while balancing public safety with health priorities, and integration of policework with a constricted justice system presented numerous challenges. Simultaneously the implementation of Bill C-75¹ carried significant implications for the relationship amongst police, Crown, courts, and

¹ Bill C-75, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, received Royal Assent on June 21, 2019. Among other things, the Act modernizes and clarifies bail provisions and provides an enhanced approach to administration of justice offences. These measures are intended in part to help reduce the overrepresentation of Indigenous people and vulnerable populations in the criminal justice system, including people with addictions and mental illness.

community. Participants heard from an expert panel on these dynamics, then discussed the implications for the system going forward in considering the following questions:

1. What are the key issues you have observed with respect to the police-justice system relationship during the pandemic, and how might these be addressed or resolved in future?
2. Bill C-75 was enacted shortly before onset of the pandemic. What impacts on resources, operations, and community relationships can be attributed to implementation of this legislation?
3. Imagining a future unspecified crisis of equivalent scale to Covid-19, how might the justice system be better prepared?

Justice Innovations Update

Participants heard two presentations on contemporary justice initiatives in British Columbia:

- The establishment of British Columbia's first Virtual Indigenous Justice Centre; and
- The implementation and experience of the Peer Assisted Care Team project (PACT).

Session 3: Access, security, and fairness

The pandemic occurred at a time when justice systems were already experimenting with increased use of video appearances in a variety of contexts. This shift accelerated dramatically in the pandemic, with remote appearances becoming the norm rather than the exception, certain categories of appearance being considered dispensable, and significant challenges encountered in following established process and security with the change of medium. A panel discussion highlighted some of the central emerging issues. Following this discussion, participants considered the following questions:

1. What are the principal access to justice concerns emerging or exacerbated as a consequence of pandemic response; and what is necessary to mitigate them?
2. Identify any security risks you see which have emerged as a consequence of pandemic measures. Are these being/can these be appropriately managed?
3. What are the key considerations in balancing expanded remote access with decorum and fairness of process?
4. What have pandemic measures revealed regarding issues of access to justice and dislocation in northern and remote regions of Canada?

A view from outside the system

Participants heard from a leading Canadian journalist, invited under the Symposium's non-attribution rule, who offered their thoughts on the issues at hand and the content of the plenary discussions, prior to the final session in which participants developed recommendations.

Symposium recommendations

In their deliberations on March 26th, participants developed a list of comments, insights, suggestions, and proposed actions using the Mural online content-gathering application. The organizing team gathered and analyzed this material together with notes taken on all plenary interventions during the first two days of the Symposium and developed a set of draft recommendations. On April 9th, following earlier distribution of the draft recommendations, participants in plenary offered suggested revisions to the draft.

Following a further period of review, the participants at the Fourteenth Symposium made the following fourteen recommendations.

A. Cross-sectoral collaboration, problem-solving, and redefining the criminal justice role

- 1. We must invite a whole-of-government discussion about the intersectoral roles of the justice, health, and social sectors in addressing crime and disorder, and about how we define risk and public safety.**

Participants recognized that the pandemic experience has highlighted often-unprecedented collaboration and coordination of the justice, health, and social sectors to fashion responsive solutions. It has also sharpened understanding of the interconnected and limited nature of justice-related solutions relative to other social determinants in both Indigenous and non-Indigenous communities (or society), including racialized communities. This and other recent developments have focused attention on the social issues the justice system is currently expected to address, and on the need for more collaborative and inclusive definitions of public safety and well-being.

We should grasp these opportunities while the experience of pandemic collaboration is fresh and learn from fast-accumulating high-quality research about the factors that allow people to thrive, to build momentum for reform and alter public expectations about the justice system as a catch-all default solution for broader social issues – and, when we experience setbacks in crime and disorder, to understand that these are not failings exclusive to the justice system.

- 2. The coordination networks established to manage pandemic issues have value beyond the pandemic and must be sustained and broadened by concrete actions.**

Participants were in general agreement that one of the principal silver linings of the pandemic has been closer communication, cooperation and/or collaboration amongst justice actors, amongst the system and its usual stakeholders and partners, and with other sectors not normally in close connection to criminal justice. These closer ties are mutually beneficial and productive and must not be wasted or abandoned. There is both a need and an opportunity to further strengthen and institutionalize these ties to make them more sustainable.

There are also some missing participants at some of these tables who should be routinely included: in particular, defence, corrections, Indigenous-serving organizations, and community reintegration resources. It is also important to bear in mind that independent justice actors are not always able to “collaborate”; therefore, terms of engagement in such groups should be designed to maximise principled engagement and define clear boundaries.

B. Lessons of the pandemic for equity, access, and reconciliation

3. We must learn from pandemic-era inequities regarding services to Indigenous communities to bolster community-based and self-determined justice approaches.

While overall reconciliation with Indigenous peoples eclipses pandemic-related justice issues in importance, nevertheless the pandemic has thrown into further relief the inequities experienced by many Indigenous communities by the criminal justice system, such as the lack of adequate technology in these communities, compounded by the fact that in person justice services have been entirely suspended or severely restricted for extended periods due to pandemic-related restrictions. We must use this opportunity to close resource gaps, but we must also recognize that the chronic failure of the colonial system to serve northern and remote communities adequately and fairly in justice matters makes funding and empowerment of community-based and/or self-determined justice solutions necessary.

4. We must make a serious commitment to operational funding of legal aid in criminal matters and to build a true understanding of Canada’s access-to-justice crisis.

The pandemic has revealed, more starkly than before, the longstanding shortfalls in legal aid funding and resulting professional stresses on defence counsel which will have lasting negative consequences. Participants noted the high degree of variability in legal aid funding across different provincial and territorial jurisdictions. It is not sufficient to leave this to provincial and territorial discretion. Supplementary federal funding for legal aid, national standards or outcomes for legal aid services and eligibility, and Indigenous consultation, are also required.

Many participants observed that the pandemic has been a collective experience with very different provincial and territorial justice consequences and patterns. Noting the real challenges of access to justice which have been highlighted – including but not limited to the need for increased and more equitable funding of legal aid and support for unrepresented litigants – an understanding of national outcomes and a means of ensuring accountability are needed to ensure Canadians enjoy equal rights before the justice system. This will require federal, provincial, and territorial (FPT) involvement but must also involve a broader community of practice and Indigenous consultation. Our discussion of this must be public rather than in-system, given the importance of legal aid to the exercise and enjoyment of basic rights before the law.

5. Video and other communications technology must be accessible and equitably applied, particularly in northern, remote, and fly-in communities.

Many participants noted wide variability in access to technology at both the individual and community levels, inside and outside the justice system. These issues are not limited to court appearances and are systemic, including other instances such as parole hearings and disciplinary hearings. Technology is not one-size-fits-all and should be adapted to the needs of the participants at all stages of the criminal justice process. Provincial and territorial justice systems reliant on video access must have appropriate and sufficient infrastructure together with adequate training for staff.

Access to justice considerations must form part of governments' broader information technology infrastructure investments in rural and remote communities, including Indigenous communities, and cannot be seen as a discretionary piece. More, better, and truly private access to communications technology must be available to people in all types of custody locations and must be incorporated in new and retrofit building plans across the sector, to ensure the right to counsel and personal safety and privacy. Acceptance of the realities of funding and implementation timelines must be paired with real commitment to closing these gaps.

6. We must create a national strategy to incorporate technology integration into access-to-justice initiatives mindfully, to ensure access to the courtroom via technology is not mistaken for access to justice.

Many participants noted that the effects of technology on access to justice in Canada are not yet fully understood but are not entirely benign. We should use virtual courts wisely and not just because we can for reasons of efficiency. Beyond "digital divide" issues, virtual proceedings can alienate or be inaccessible to some victims and/or vulnerable participants, make it more difficult to explain process to self-represented litigants, may be culturally inappropriate, and are inappropriate in certain kinds of situations. Above all, we need to ensure technology is supporting human-centred experience.

Many participants were also concerned with the potentially corrosive effect of technology on public confidence in the administration of justice, due to the appearance of devalued process at times exacerbated by lack of decorum. Leadership and boundary-setting from the judiciary will be critical in addressing this trend.

C. Bolstering community resources to increase diversion and maintain public confidence

7. To decrease the use of custody while maintaining confidence in the rule of law, we must fund and champion community supports, and educate the public about why this matters.

Participants recognized that decreased use of custody as a response to crime and disorder requires a meaningful and effective increase in community support of accused

persons and victims. Funding for reintegrative services is still piecemeal, and our approach is still not systemic. Community resources have yet to be recognized and incorporated as central to the criminal justice system. A whole-of-government response to crime and social disorder, including not Indigenous government, is required. Communications and education are vital for public support of this shift, and can and should be led not just by defence and non-profit organizations but by public institutions such as police, Crown, and corrections as well.

Working with police to ensure public confidence, and being clear-headed about public safety issues, we must fund and enable community/peer/health responses to triage people with mental health and substance use issues. We must invest in hybrid crisis response, diversion, and culturally appropriate responses. We must make greater investments in restorative justice and community corrections, to decrease our reliance on brick-and-mortar jails. We must fully integrate public health, mental health, equity and diversity, and anti-poverty services into what we call core criminal justice system functions. We must create justice centres for the disadvantaged who are routinely in criminal law trouble to divert them from the court system where possible. We must also explore the merits of whole-of-government operational approaches, such as the Sequential Intercept Model.²

8. The pandemic has shown the need for us to develop (or in some cases, apply under-utilized) legislative tools which allow de-escalation of less serious offences.

Many participants felt that policy and collaborative efforts to focus the system on serious crime while diverting cases with manageable social origins and consequences could not be achieved by justice professionals alone or in partnership and requires legislative tools. This includes legislative reform to further restore judicial discretion in sentencing, consideration of current offences which may be decriminalized, broadening the application of de-escalation processes such as the requirement in Quebec for the prosecution to consider written recommendations from defence,³ the use of a “presumption of diversion,” and reducing the national reliance on remand which has remained resilient despite the passage of Bill C-75.

D. Managing the risks and unique opportunities of technology

9. Security and privacy concerns related to virtual appearances require sustained attention.

² “The Sequential Intercept Model (SIM) details how individuals with mental and substance use disorders come into contact with and move through the criminal justice system. The SIM helps communities identify resources and gaps in services at each intercept and develop local strategic action plans.” See the US Substance Abuse and Mental Health Services Administration, “[The Sequential Intercept Model.](#)”

³ This approach is enabled in Quebec by the pre-charge approval process and would not be possible in jurisdictions where charges are laid by police.

Many participants had serious concerns over unauthorized participation in or electronic capture of virtual proceedings, security of information, and risks to victims and witnesses (e.g., off-camera intimidation), while recognizing that in-person proceedings are themselves not immune to such concerns. There is a need to establish and address actual risks, while at the same time dispelling other concerns which may not be based in fact. In turn, these concerns exist within our broader commitment to respect the principle of open courts. This is not a simple set of issues and will take time to resolve.

10. Common technology challenges demand consideration of shared solutions.

All justice systems represented by participants at the Symposium face pandemic-era challenges of implementing modern digital technology to facilitate appearances, accelerate information and data sharing, improve access to justice, and improve governance of justice processes. There is room for greater FPT coordination to create common virtual and information environments, share technology with justice participants, and increase buying power. There is also a strong case for national funding and national standards or outcomes on digital evidence management and electronic disclosure, privacy, and security, and more generally on justice technologies.

11. With hybrid courts in our future, the criminal justice system should exploit the unique benefits of virtual spaces, rather than simply overlaying historical in-person process.

The risk of “paving the cow-path” is very real. Participants urged systems designers to recognize what in-person and virtual processes respectively inhibit and enable. It will be important to build on user experience and work with younger generations of professionals in designing the hybrid system they will inherit. This is a change opportunity, a chance to re-examine and improve existing procedures/processes, which we should embrace. We should not allow a desire for perfection to paralyze progress.

[E. Addressing pandemic case backlogs](#)

12. Provincial and territorial prosecution services, in dialogue with other system actors, must engage in principled prioritization of criminal cases to address looming and crippling case backlogs associated to the pandemic, maximizing diversion as we do so.

Participants in many cases felt that the increasing pandemic-era backlog which has emerged in some provinces had the potential to overwhelm the system, with a real threat of *R. v. Jordan* stays of proceedings in significant cases. This will require intensive research into the makeup of case backlogs, consideration of innovations, and management of a degree of risk. It will in many cases be crucial to articulate priorities and maximize diversion of less serious cases in the interests of timely justice in more serious matters. Virtual or hybrid approaches will likely play a crucial role if we are to be successful in avoiding stays in the latter category. It may be useful to define the roles and responsibilities of various justice sector actors in tackling backlogs, to promote accountability.

F. Pandemic patterns and research questions

13. We must consolidate research on equitable treatment and access to justice during the pandemic, not only to understand the pandemic's effects but to identify key issues to be monitored and addressed in a hybrid-court era and inform public discourse.

Participants noted the variation in pandemic justice patterns as demonstrated in data presentations and in their own jurisdictions' experiences. Specific areas of interest in the pandemic era include serious personal crimes, femicide, gratuitous violence, and hate crimes; remand and custody decrease and rebound (and the reasons underlying these variations); impact of video utilization, including on victims of crime; impact of changed conditions of confinement and reduced services to custodial populations; and reduced use of custody and reoffending patterns. These areas should be analyzed and monitored further.

14. We must establish and fund a national centre for evidence-based justice reform.

Participants noted that there is a national justice data function but no independent national body with a mandate to develop evidence-based reform proposals from those data and to collate and streamline existing data efforts and best practices across jurisdictions. We also lack common national data collection standards in many areas of the justice system. Past Canadian justice meetings have called for the establishment of a formal, funded collaborative centre for justice reform, such as the US Council of State Governments Justice Center (<https://csgjusticecenter.org/>) which is an independent and non-partisan non-profit organization. Such an approach would give the justice system a more structured opportunity to engage with academics on case studies, and to evaluate what has worked and what hasn't. Public engagement should be an integral component of evidence-based reform, and a national commission could be created to facilitate and oversee such engagement. Disaggregated data is crucial. Participants also raised the risk of getting overly caught up in research, to the detriment of a solution-oriented and problem-solving approach.

Future events

The Fifteenth Symposium will take place in 2023 and will return to the theme of Indigenous Justice.