

# Rethinking Criminal Justice in Canada

Round Table Report



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## INTRODUCTION

Reforming the criminal justice system has been the subject of intense political debate in Canada in the past decade. Competing ideals related to rehabilitation, punishment and fairness have led to markedly different policy approaches and sharp disagreements among political parties on the best way forward.

The Government of Canada has made reviewing the criminal justice system and sentencing reform a top priority in justice policy. The mandate letter presented to the Minister of Justice clearly states that a review should be conducted to “ensure that we are increasing the safety of our communities, getting value for money, addressing gaps and ensuring that current provisions are aligned with the objectives of the criminal justice system.”<sup>1</sup>

Of course, such a review cannot be conducted in a vacuum. Changes to the criminal justice system can have wide-ranging implications for the individuals who come into contact with it, as well as for their ability to access social services and other supports. Indeed, criminal justice interacts with myriad other social systems such as health, income support, child care and housing in complex ways. The review must take this reality into account and limit the potential for unintended and harmful consequences for offenders, victims, their families and communities.

As part of the review of the criminal justice system, four round table discussions were held – in Halifax, Montreal, Toronto and Edmonton. They brought together academics, community leaders, social policy experts, jurists and other actors in the criminal justice system, for a focused discussion on the interaction between the criminal justice system and other social systems. All the round tables followed the same agenda,<sup>2</sup> to ensure the results could be aggregated into a summary report.

To ensure that everyone had an opportunity to contribute meaningfully to the discussion, and to encourage all participants to speak freely, the size of the groups was limited to approximately 15 participants,<sup>3</sup> and the events were held under the Chatham House Rule. The discussion was on the record but not for attribution; participants took part as individuals and not as official representatives or spokespersons of their organization; and participants were not to be quoted outside the room (in this report or elsewhere) without their explicit prior approval.

It should be noted that this consultation was one of several conducted by Department of Justice over the past two years. The other consultations were structured differently and reached out to experts in different fields – specifically law enforcement and the legal community – and focused on different dimensions of this complex issue. This report should therefore be viewed as one of many elements contributing to the criminal justice system review.

<sup>1</sup> Office of the Prime Minister, <https://pm.gc.ca/eng/minister-justice-and-attorney-general-canada-mandate-letter>.

<sup>2</sup> Please see appendix A for the agenda.

<sup>3</sup> Please see appendix B for the list of participants.

## 1. SUMMARY OF THE ROUND TABLE DISCUSSIONS

Canada's criminal justice system needs more than reform; it needs an overhaul. That is the strongest and clearest message that was heard during the round table process. In the opinion of the participants, the review must reconsider the values and principles that underpin the system, and it must consider specific policy changes through a new conceptual lens. Participants readily acknowledged that such fundamental change cannot occur overnight, and that this review should be viewed as the first in a multistep process.

### 1.1 Systemic problems

When asked to describe what ails the criminal justice system, the clear majority of round table participants agreed on two main points:

- The system is based on values and principles that are woefully out of date, which has a negative impact on many individuals who come into contact with it.
- The system disproportionately targets individuals from specific demographic groups and is particularly ill equipped to deal with their needs and realities. It therefore has an especially negative impact on them and the communities to which they belong.

A meaningful reform of the criminal justice system will have to tackle these two fundamental problems head on if it is to have a lasting impact.

#### 1.1.1 Archaic culture entrenched in criminal justice institutions

According to many round table participants, the first task of the review should be to acknowledge the archaic culture that remains entrenched in the criminal justice system and conditions its behaviour. As one legal expert put it, the system is still fundamentally rooted in the medieval English model. It is based on the theological idea that, through penitence and atonement, offenders would find their way back on the right path. In this view, police and corrections services are cast in the role of maintaining the line between order and chaos, isolating those who have strayed from the path of the righteous. Over time, it has become clear that the model does not lead to positive outcomes for offenders or society, but reforms since the 1960s have been tentative and piecemeal, with recurring cycles of identifying problems and creating rules to fix them. This process has complicated the criminal justice system by adding layers, but it has not been able to truly fix it.

Many participants argued that a resistance to cultural change prevails in the police and corrections services, as well as the courts, notwithstanding the goodwill and intentions of some of their leaders. These institutions have been reluctant to adjust how they perceive their roles in the criminal justice system. They often see changes proposed by policy-makers as having been forced upon them, and there has been resistance to implementing changes. This mentality trickles down through the police services and sometimes prevents younger officers from applying the more modern techniques

in their training. One participant described an instance in which a province closed prisons because of their harsh conditions and opened five “softer” prisons founded on more modern principles. But within a few years the new prisons had gradually morphed into the prisons they had been created to replace.

Recent events have begun to change the perspectives of many people who are enmeshed in the system. The system is currently at capacity and is full of individuals who keep finding their way back into it – often because of circumstances that could have been avoided if more appropriate services had been deployed to support them. Some participants argued that public awareness of the inefficiencies and unfairness in the system has increased, and that this could be turned into an opportunity to press for change.

### 1.1.2 Systemic discrimination

According to participants, the outdated culture and values that underpin the criminal justice system negatively affect all individuals who come into contact with it, but that impact is felt more acutely by certain segments of the population. The criminal justice system discriminates against groups that are already vulnerable or marginalized, and this is exacerbated by the consistent underrepresentation of certain groups – notably Black and Indigenous Canadians – in criminal justice professions.

Round table participants identified certain groups whose needs were not being adequately addressed by the system, and others who were being discriminated against. In the first category, the first group is Canadians with mental illness, who come into contact with the criminal justice system and are frequently processed with little or no consideration of their condition. Their mental illness often contributes to their initial contact with the criminal justice system but is not treated as such, even when it is a recognized diagnosis. Rather than focusing on treatment, the system is criminalizing mental illness.

The second group is women, who, according to some participants, are currently the fastest growing demographic in prisons, often because of substance abuse charges. As many participants argued, their needs are gendered and must be addressed accordingly.

Third, individuals with no recognized immigration status in Canada (“stateless” people) are among the most vulnerable members of society. When they come into contact with the criminal justice system, many face deportation with no regard for the severity of their alleged offence. One participant mentioned the case of Abdoul Abdi, recently in the media, as an example of how this policy can have a disastrous outcome. Abdi came to Canada as a 6-year-old child refugee from Somalia, but he was taken from his parents a year later and spent the rest of his childhood moving between foster homes, 31 in total. Although he eventually qualified for Canadian citizenship, none of his foster parents ever applied for it. At the age of 23, the government sought to deport him after he had served a four-and-a-half-year sentence in prison.<sup>4</sup> Several months later, however, a Fed-

<sup>4</sup> CBC News, “Abdoul Abdi, refugee facing deportation, says he is looking for a second chance,” <http://www.cbc.ca/news/politics/abdoul-abdi-exclusive-interview-1.4504760>

eral Court judge decided to set aside that decision and referred Abdi's case to a deportation hearing, and the federal government chose to abide by that decision.<sup>5</sup>

Fourth, people aged 50 years and older account for 24 percent of offenders serving in Correctional Service of Canada prisons. This population has increased sharply in the last decade and is expected to continue to increase.<sup>6</sup> Like people who suffer from a mental illness, aging individuals often enter the criminal justice system with pre-existing health problems, frequently dementia and substance abuse. The prison system is ill-equipped to deal with age-related health issues, and the chances of their being released are very low. When they are released, they frequently cannot find any person or organization to take them in, and they choose to stay in prison to receive care. There are no options for compassionate release, and prisons eventually become makeshift nursing homes for their aging populations.

In the second category – groups that face specific discrimination – participants focused on two groups. Many participants said that there is systemic racism toward Black Canadians in the criminal justice system. Black men are conditioned through the education system to see themselves as potential offenders from an early age. Police officers regularly card Black Canadians, often for no specific reason apart from racial profiling, bolstering the self-defining narrative of Black criminality. Many participants insisted that Black Canadians must receive more socially equitable sentencing that takes into account the circumstances that lead Black Canadians, especially youths, into the system. While some anti-racism strategies have been adopted, such as Ontario's *Anti-Racism Act*, more efforts are required.

The other group in the category of those who are discriminated against is Indigenous Canadians, who account for 27 percent of Canada's prison population, even though their share of the adult population is under 5 percent.<sup>7</sup> Participants in all the round tables condemned the criminal justice system's treatment of Indigenous Canadians. As many participants noted, this can be seen as part of the intergenerational cycle of institutionalized racism toward Indigenous peoples, which started with colonization and continued with policies of forced assimilation, notably residential schools. This problem is so deeply rooted that some Indigenous individuals don't identify themselves as Indigenous for fear of discrimination.

Participants also noted that Indigenous peoples' unequal access to justice is also reflected on the victims' side. For example, many viewed the acquittals of Gerald Stanley and Raymond Cormier, charged respectively with the murders of Colten Boushie and Tina Fontaine, as gross miscarriages of justice. When trying to explain why these prob-

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<sup>5</sup> CBC News, "Ottawa won't pursue deportation of Abdoul Abdi, Goodale says," <https://www.cbc.ca/news/canada/nova-scotia/abdoul-abdi-deportation-1.4751128>.

<sup>6</sup> Correctional Service Canada, "Older Offenders in the Custody of the Correctional Service of Canada," <http://www.csc-scc.gc.ca/research/005008-rs14-21-eng.shtml>.

<sup>7</sup> Statistics Canada, "Admissions to adult correctional services, by characteristic of persons admitted, type of supervision and jurisdiction, 2015/2016," table 5, <https://www.statcan.gc.ca/pub/85-002-x/2017001/article/14700/tbl/tbl05-eng.htm>.

lems persist, several participants underlined that most criminal justice institutions have not made the effort to better understand and respond to the unique history, culture, social circumstances and needs of Indigenous peoples.

In April 1999, the Supreme Court of Canada ruled in *R. v. Gladue* that, when sentencing Indigenous offenders, judges should consider systemic factors and the social context when deciding both the type and duration of sanctions. Further to the judgement, Gladue reports were introduced to help judges make informed decisions in those cases and determine the underlying factors. Participants suggested that to date the results of *Gladue* have been mixed, and that while Gladue reports have sometimes been issued in cases involving Indigenous offenders, it is not always the case.<sup>8</sup> Producing them can be expensive and time-consuming, and courts do not always know how to use them. Moreover, in some jurisdictions where they are produced, the reports are often read aloud in the courtroom with no regard for the offender's privacy, or the potential harm of sharing sensitive and personal information. As one participant argued, Gladue reports are supposed to help the system to respond to Indigenous offenders' needs. but in practice they are sometimes used against that individual.

### 1.1.3 The criminalization of poverty

All the groups mentioned above have a higher propensity to be living in one or more precarious situations: homelessness, unemployment, drug and alcohol addiction, physical and mental health problems, and chronic poverty. One participant described this as the judicialization of misery. There was a clear consensus in all cities that the criminal justice system should not be used to solve problems that are fundamentally social in nature, but that it happens all the time.

The limited availability of social services is sometimes the reason an individual is driven to criminality. A few participants referred to the child-welfare-to-youth-criminal-justice-system pipeline: case workers take children away from dysfunctional living conditions in the hope of improving their outcomes, but they eventually end up in prison. While the intent may be noble, very few support services are available to foster children, so making the transition from government care to independent living can be difficult. These children mostly grow up without parental guidance and no family ties. Thus welfare, instead of solving a social problem at its root, eventually becomes a criminal justice problem. As one participant put it, "governments often turn out to be lousy parents."

This cycle is typical of many precarious social situations, sometimes those that seem to be least severe. One participant noted that poor educational outcomes (e.g., dropping out of school, low literacy) can lead to criminality. The resulting criminality – even low-level criminality – can decrease the likelihood of positive outcomes for these youths when they become adults. Thus, they are put on a path toward precarious situations,

<sup>8</sup> Department of Justice, "Spotlight on *Gladue*: challenges, experiences, and possibilities in Canada's criminal justice system," September 2017. P. 26. <http://publications.gc.ca/site/eng/9.851019/publication.html>.

which might have been prevented if there had been an intervention earlier on. Many participants also noted the high incarceration rates among homeless Canadians, many of whom are also victims of a cycle of homelessness and incarceration.

#### 1.1.4 Barriers to justice

At all four round tables, the participants agreed that two of the main reasons for negative outcomes in the criminal justice system are unequal access to justice and unequal treatment in the criminal justice system. Some argued that lawyers, despite their best efforts, are often overloaded with cases and sometimes advise their clients to plead guilty in exchange for a reduced sentence, or perhaps to minimize clients' exposure to the system. As a result, 90 percent of those accused in criminal cases plead guilty. Participants condemned this practice, arguing that it is a denial of justice for the most vulnerable.

There are also administrative challenges that the accused frequently confront while they await trial, the outcomes of which can have a significant impact on their cases. Here are some of the main ones. (1) If they want to contact a family member or perhaps a resource on the outside, they cannot leave voicemail, because the person they are calling must accept the charges. This can delay their access to potential support. (2) In many jurisdictions' criminal justice systems, access to services in the minority official language is limited. As well, for Indigenous Canadians and new Canadians, there are also often cultural barriers that limit their ability to assist in their own defence. (3) The accused might not have access to a lawyer, which can cause psychological distress. (4) Peremptory challenges<sup>9</sup> are often used to limit the diversity of jurors, which arguably increases the rate of incarceration among groups that already face other forms of discrimination. (5) The insufficient use of preliminary hearings<sup>10</sup> was lamented by round table participants.

Of course, there are also barriers to justice for the victims of crimes. During the round tables, participants singled out two particularly serious barriers. The first is underreporting. Victims often choose not to report crimes to the police for fear of repercussions against them, or that their cases will not be taken seriously. An important example of this is sexual assault cases, where as few as one in five are reported to the police.<sup>11</sup> The second is trial delays. Often cases are taken to trial only after long delay, and when a case is eventually heard, the long delay has already taken a serious toll on the victim. As several participants explained, there is limited support for victims in the criminal justice system. These victims are revictimized when their trauma is not addressed.

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<sup>9</sup> Peremptory challenges "allow Crown and defence counsel to exclude a potential juror without giving a reason," Department of Justice, "Court delays and modernizing the criminal justice system," <http://justice.gc.ca/eng/csj-sjc/pl/cdmajs-msjprd/abt-apd.html>. As noted in "Charter Statement - Bill C-75: An Act to Amend the Criminal Code, Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts," Bill C-75 also seeks to eliminate peremptory challenges. See Department of Justice, <http://www.justice.gc.ca/eng/csj-sjc/pl/charter-charte/c75.html>.

<sup>10</sup> A preliminary hearing is a "hearing held by the Court to decide whether there is enough evidence to send the case to trial. Preliminary hearings are only held for indictable offences." Department of Justice, "Trial," <http://www.justice.gc.ca/eng/cj-jp/victims-victimes/court-tribunaux/trial-proces.html>.

<sup>11</sup> Statistics Canada, "Self-reported sexual assault in Canada, 2014," <https://www150.statcan.gc.ca/n1/pub/85-002-x/2017001/article/14842-eng.htm>.

### 1.1.5 Unnecessary criminalization

Participants at all the round tables underlined the fact that often, once an individual reaches the criminal justice system, it is too late for them to ever really come out of it. Many offenders find themselves stuck in a revolving door, frequently for trivial matters that accumulate and exacerbate their situations. As a result, they are never really rehabilitated. Participants argued that the Criminal Code must be reformed to meaningfully reduce incarceration rates and to favour more socially minded sentencing and extrajudicial sanctions instead. Specifically, participants urged the government to consider the decriminalization of, or alternatives to, incarceration for the following offences:

- *Breaching conditions of release*: Imposing conditions on released accused/offenders too often leads them right back into the criminal justice system and does not contribute to their rehabilitation. For example, a judge should not prohibit an accused/offender who has a known alcohol problem from consuming alcohol as a condition of release, or prohibit an accused/offender from interacting with criminals and then send them to a halfway house. In these types of cases, accused/offenders are being set up to fail, and they end up back in the criminal justice system, this time for multiple infractions.
- *Administration of justice offence charges*: These charges include failure to comply with an order, breach of probation, failure to appear and being unlawfully at large.
- *Mandatory minimum sentences*: Over the past decade, the scope of mandatory minimum sentences was expanded to include a wider range of criminal offences, and this trend was accompanied by less judicial discretion to choose alternatives to incarceration. In 2013-14, 87 percent of all criminal sentences were 6 months or less and 55 percent were 1 month or less.<sup>12</sup> Although these are very short sentences, just being incarcerated can have crippling consequences for the offender, with no benefit to society. When offenders enter the criminal justice system, they leave their lives behind: their families, their work, their benefits. When they exit the system, they have to piece their lives together with a criminal record weighing them down.
- *Tickets*: Failure to pay tickets (for driving or loitering infractions, for example) can sometimes spiral out of control and lead to contact with the criminal justice system. Alternative ways of correcting these matters should be found, without resorting to incarceration.
- *Impaired driving, possession of drugs and thefts under \$5,000*: While these offences must be taken seriously, many participants expressed doubts about the effectiveness of incarceration. In some cases, community sentences and rehabilitation outside jail may be appropriate.

<sup>12</sup> A. Maxwell, "Adult criminal court statistics in Canada, 2014/2015," Statistics Canada, <https://www150.statcan.gc.ca/n1/pub/85-002-x/2017001/article/14699-eng.htm>.

## 1.2 A new approach: Less punishment, more prevention and rehabilitation

While incarceration has a legitimate role to play in Canada's criminal justice, many participants argued that its overuse has severely hampered the system's ability to rehabilitate those who come into contact with it. In all four cities, participants made it very clear that to improve outcomes, we must shift the paradigm of how we approach criminal justice. They argue that we must rethink the very foundation of criminal justice and reject the notion of "punishing" offenders.

In its place, participants advocated for a system centred on prevention, diversion, restorative justice and rehabilitation. More emphasis should be put on social services to prevent individuals from entering the system in the first place. According to this paradigm, being incarcerated would be the exception not the norm for offenders. In this way, many of the issues we try to address through the criminal justice system could be dealt with more effectively by actors outside the system.

Rejecting the notion that this view is too idealistic, participants noted a number of pilot projects that have high success rates. The challenge has not been to show that they work, it has been to scale them up. Notably, the potential of specialized courts such as those for drug treatment, mental health, domestic violence and wellness was brought up in all four cities. Participants argued that, while they may not be a panacea, they have been highly successful. Other participants mentioned successful practices at the youth criminal justice level that have not been applied in adult criminal justice. For example, in most provinces, youth ministries fund court assessments for young offenders to ensure that they get appropriate sentences. In Quebec, the ministry of health and social services provides a sufficient number of social workers to ensure that young offenders' needs are met. This more customized approach to criminal justice has yet to make its way into the adult criminal justice system, participants suggested.

### 1.2.1 Changing the narrative on offenders

To truly reform the criminal justice system, how certain offenders are perceived must be altered. Participants argued that police officers, lawyers, and judges are not informed about the precarious living conditions and/or minority cultural backgrounds of some offenders, or the realities of life behind bars. As an example of how this could be changed, one participant explained how one organization transformed the training used to sensitize police officers about Indigenous people. It had been based on a curriculum focusing on the historical atrocities experienced by Indigenous people, but it was changed into a more positive one based on Indigenous culture and the achievements of Indigenous people. It changed the way police officers viewed and treated Indigenous individuals. More broadly, participants agreed that we must change how "law and order" issues are taught in educational institutions and debated in the public square, so the depiction of offenders is more accurate and less stigmatizing.

Perhaps one way to change the narrative around offenders is to individualize their treatment within the criminal justice system. Most notably, participants insisted that

judges must exercise discretion in an offender's trial by tailoring sentences to specific circumstances. They argue that, even though two individuals might commit the same crime, the circumstances surrounding each crime will differ, and this must be taken into account. Some participants even argued for the use of Gladue-like reports in trials involving non-Indigenous Canadians.

### **1.2.2 Addressing offenders' circumstances**

According to participants, the criminal justice system focuses too much on the offence rather than the offender. It aims to punish the crime rather than rehabilitate the individual. A new paradigm should put much greater emphasis on addressing an individual's surroundings and circumstances, and on rehabilitation and prevention.

With respect to rehabilitation, some consideration must be given to reconciliation between a released offender and the community into which they are returning, including the offender's family. When an offender is in contact with the criminal justice system, the family also experiences trauma, but that is rarely addressed by the system. Participants suggested a restorative approach to justice, in which families, and even communities, are included in the rehabilitation process. They also emphasized the need to keep offenders close to their communities and not transfer them to faraway prisons. In the case of Indigenous offenders, it is important that they remain connected to their culture as part of their rehabilitation, as it has been proven that this reduces recidivism.

With regard to prevention, participants emphasized that people are a product of their surroundings, and we must seek to address problems related to their surroundings early on. For instance, often crimes committed by Indigenous and racialized youth are rooted in precarious social circumstances. When they enter the criminal justice system, they are being removed from their communities and can no longer contribute to their economic well-being, which exacerbates the cycle of poverty. Prevention aims to break that cycle within a community and encourage social conditions that decrease the likelihood of entering the criminal justice system.

### **1.2.3 Establishing the social determinants of justice**

Some participants suggested identifying the social factors that lead to negative justice outcomes as the "social determinants of justice" (drawing on the concept of "social determinants of health"). Round table participants identified five "needs" (determinants of justice): (1) income, (2) employment, (3) stable housing, (4) education, and (5) health.

One participant suggested creating an archive of information on the impact of the criminal justice system, as well as the social situations and conditions that lead individuals to commit crimes. The participant said that might be useful when considering which social services must be integrated into prevention and rehabilitation strategies, to improve their outcomes.

### 1.2.4 Going beyond pilot projects

To make the shift to the proposed new paradigm, resources must be diverted out of criminal justice toward social services and upstream prevention. According to participants, because it has not been politically saleable to divert money away from the criminal justice system, governments have tried to integrate the necessary services into the system. This has not been successful, because corrections officers and police officers are not, and should not be, social workers or health services providers. Participants argued that this has served to increase the budgets of criminal justice institutions, without improving the outcomes. As an alternative, they recommended that more money should be invested in upstream preventive services, thereby reducing the need for the criminal justice system to intervene. Participants also urged all levels of government to properly fund and establish successful projects such as alternative courts.

## 1.3 Building better partnerships

According to participants, criminal justice institutions, social services, Indigenous institutions and NGOs currently operate in silos without any real bridges to connect them. Many of the problems in the system are the result of disconnected processes and lack of communication.

### 1.3.1 From silos to partnerships

When asked about how the silos might be connected, participants agreed that criminal justice actors must build partnerships with organizations outside the system, rather than trying to duplicate or replace them inside the system. The idea of further integrating social services within the criminal justice system was rejected by most participants, as this approach has in effect altered the role of social service providers. Instead of incorporating more social services into the criminal justice system, participants argued, the system should be made “smaller” and improve connections with outside social actors who can better respond to offenders’ “noncriminal” needs. With more focus on these types of collaboration in training programs, and with more sharing of information about successful pilot projects, participants said that this transition could be made relatively quickly.

### 1.3.2 Putting the individual at the centre

For prevention and rehabilitation to succeed, the system must be centred on individuals. The services offered to individuals must be interconnected, and communication among service providers must be maintained as the individual advances through the criminal justice system. There have been collaborative cases where everyone involved in a case has been required to sit together, discuss the needs of the individual and coordinate the response, using models like situation tables and hubs. Despite their success, they are still rare, however, and collaboration only occurs in the “crisis moment,” with limited follow-up. Participants explained that, once individuals enter the criminal justice system, outside service providers no longer have access to them, so many incarcerated individuals in pretrial detention/remand do not receive any services, which

can exacerbate conditions that were being addressed before the arrest. Participants also noted that all the services that are deployed are funded by the government, and there is much waste on redundant services because of a lack of communication.

The notion of building partnerships is not new. As one participant indicated, governments have been encouraging criminal justice institutions to collaborate with social services and integrate communities since the 1980s. Still, participants insisted that more collaboration between criminal justice and social services is crucial if we are to improve outcomes for individuals and increase the efficiency of the criminal justice system. Participants supported the creation of a model where at-risk individuals and offenders are supported by a linked network of criminal justice and social services. And these linkages should exist not just across services but also over time, and they should not be limited to crisis moments.

While they said collaboration and information-sharing are essential, participants also warned that we must consider the privacy and ethical implications carefully. Some suggested that getting consent prior to sharing information should be required, emphasizing the right to privacy. Others were concerned that individuals who are not in a fit state to provide consent and might benefit from “joined-up” services could be left out, with potentially negative consequences. One suggestion that was well-received among participants was to create an organization that provided case workers as needed to help at-risk individuals/offenders navigate the prevention and rehabilitation system. This “system navigator” would coordinate service provision and monitor the dissemination of an individual’s information. One participant proposed the integration of an assess, plan, identify and collaborate model (APIC) into the case workers’ functions, to allow for greater discretion.

### **1.3.3 Institutionalizing partnerships**

Going even beyond the idea of outside partners collaborating on a case-by-case basis, participants called for the institutionalization of these partnerships. At present, when social services and NGOs do engage with the criminal justice system, the relationship between the actors is still rather informal and the nature or degree of engagement is not uniform across the criminal justice system. A large majority of participants agreed that institutionalizing partnerships, with an oversight body to monitor programs, could benefit both criminal justice institutions and their partners.

### **1.3.4 Criminal justice-community partnerships**

Several participants encouraged building partnerships between criminal justice institutions and the communities that are affected by them. They identified three main benefits of this type of approach. First, community oversight over criminal justice investigations can legitimize the process. Second, when police officers and social workers build relationships with communities, they can get access to information to help them identify at-risk individuals. They could also adapt prevention services to the needs of the community. Third, innovative initiatives aimed at prevention and rehabili-

tation often emerge out of communities that are subject to serious and violent crime. Building partnerships between criminal justice institutions and social services could help these initiatives and bolster their impact on the community.

### **1.3.5 Nation-to-nation partnerships**

As noted above, Indigenous Canadians have been particularly negatively affected by the criminal justice system. Participants in all cities agreed that Indigenous leaders and governments should be consulted in any criminal justice reform, and such reforms should not in any way happen “to” them. To improve the outcomes of at-risk and incarcerated Indigenous individuals/offenders, Indigenous leaders should play a more prominent role in both prevention and rehabilitation programs. Various participants also suggested the implementation of Indigenous judicial practices in cases involving Indigenous people.

## **1.4 Civic and governance considerations**

### **1.4.1 Intergovernmental alignment**

According to several participants, one impact of the silo effect, which limits the potential for collaboration, can be attributed to the misalignment between the policies and programs of different levels of government. Participants noted that the federal government has tried to implement several new models but did not work with the provinces, thus limiting the chances of success. The introduction of new approaches in the criminal justice system could be more efficient if the federal and provincial/territorial governments determined priorities together and coordinated funding and research.

Participants also noted that there are large disparities among provinces and territories in the delivery of standard services, but also within each province or territory. How record suspensions, discharge planning and health care are carried out varies greatly, so their outcomes depend on where the offender is incarcerated. Participants in all cities also lamented the fact that successful practices implemented in one province often do not get replicated in other jurisdictions. One participant argued that governments and criminal justice institutions are simply not very good at making connections and learning lessons across time and space. Participants also mentioned that successful practices from abroad should be looked at.

### **1.4.2 Funding research and implementing innovations**

Participants from research professions in all four cities lamented the lack of data collection within criminal justice institutions, as well as the limited access researchers have to the data that exist. They argued that, to make policy decisions and optimize outcomes, high-quality analysis of empirical evidence is needed. Some researchers have been able to get access to criminal justice data, but even when they do, the leaders who could benefit the most from the research don't take the time to read it.

In some jurisdictions, access to more modern processes has been limited, especially in rural communities. Some jurisdictions still use paper instead of computers, others have no equipment to video-conference in court.

Several participants recommended the creation of institutions to either oversee or apply the criminal justice reforms that are adopted. One specific recommendation was to create a criminal justice reform commission composed of civil servants, stakeholders and academics to oversee any system-wide reforms and to monitor their implementation. Others recommended the creation of a database of successful pilot projects and best practices.

### 1.4.3 Partisanship and reform

Several participants argued that, for reform of the criminal justice system to achieve long-term success, greater attention must be given to public opinion. Too often, policy proposals to address criminal justice issues are reduced to slogans and catchphrases (for instance, “tough on crime,” “war on drugs” and “hug a thug”), and statistics are misused to distort reality and bend public opinion toward a particular outcome. Such approaches could lead to public policies that are disconnected from the needs of the system, and they could increase the system’s vulnerability to being changed according to partisan political considerations. Therefore, participants argued, any significant reform of the criminal justice system must include meaningful public engagement, seek multiparty support and be based on reliable research and evidence.

### 1.4.4 Reparation of past injustices

In order to be able to move forward with reform, participants in all cities implored governments to consider reparations for past and current wrongs in the criminal justice system. More specifically, they mentioned:

- *Cannabis*: Many individuals are incarcerated for possession or use of cannabis. Given that it will soon be legalized, many participants said certain of these individuals should be pardoned.
- *Foster children*: For a long time, Child Services removed children from their families and put them in foster care. Too many of these children ended up in the criminal justice system due to the precarious situations in which they grew up. The government of Nova Scotia was identified as the first to apologize for this practice.
- *Mental health*: Too many individuals with mental illness are incarcerated without receiving a mental health assessment. Participants suggested that governments should aim to reverse this trend by increasing access to mental health services both in the corrections system and outside it.
- *Solitary confinement*: The practice of solitary confinement is inhumane, and governments should provide reparations to its survivors and recognition of the trauma they have experienced.
- *Pardons*: Criminal records can cripple an ex-offender’s opportunities after they exit the criminal justice system, and they remain a constant barrier. The gov-

ernment should make pardons more accessible by simplifying the process and reducing the time it takes to qualify and the cost.

## 2. SUGGESTIONS FOR REFORM

Not surprisingly, many participants came to the round table with specific ideas of how to reform the criminal justice system. The following is a summary of the suggestions that were expressed during the round tables, as well as those that were discerned from the level of consensus on issues raised during the discussions. In some cases, the suggestions focused on a specific change to a practice or procedure; in others, they proposed an alternative approach or policy direction for the Minister's consideration.

### 2.1 Suggestions related to specific practices or procedures

Most participants supported the following specific reforms:

- Abolish mandatory minimum sentences and restore discretion in sentencing;
- Review the treatment of breaches of release conditions;
- Eliminate administration of justice offence charges;
- Consider pardons for certain cannabis-related convictions;
- Consider making formal apologies for wrongs committed by the criminal justice system;
- Examine how technology and communications tools could improve an individual's experience with the criminal justice system;
- Abolish solitary confinement; and
- Make pardons more accessible.

### 2.2 Suggestions related to policy or approach

Participants had much to say about the broader values and principles that underpin the criminal justice system, as well as its overall performance. In summary, they suggested that the review should achieve the following:

#### 1. Acknowledge that fundamental reform is needed.

The clearest message coming from the round tables is that the criminal justice system needs fundamental reform, which may take several steps to achieve. The review should identify reforms that can be implemented immediately in order to ease the burden on the criminal justice system and provide better support to individuals being served by it, but also acknowledge that this is a long-term process. The review should identify the end goal of the reform and situate this first stage in that longer-term process.

#### 2. Articulate values and principles that should guide the criminal justice system in the twenty-first century, including how they relate to punishment and rehabilitation.

The review should consider what values should drive Canada's criminal justice system in the twenty-first century, and how they might differ from those of the past. These up-

dated values, and the changes in the system's behaviour they are expected to bring, should be clearly articulated in the resulting reform.

### **3. Acknowledge that individuals are a product of their surroundings and invest in preventive measures.**

The review should aim to identify the "social determinants of justice" and prioritize non-intrusive programs to prevent negative justice outcomes. Too often there are early signs that certain individuals could potentially find their way to the criminal justice system.

### **4. Acknowledge that the criminal justice system has a more negative impact on certain demographic groups and address the specific needs of those groups.**

As one participant put it, the criminal justice system is demonstrably not blind to identity, so perhaps its treatment of individuals should also accommodate difference.

### **5. Acknowledge that systemic racism exists, and outline specific steps that can be taken to remedy it.**

The review should document the many ways in which the criminal justice system disadvantages certain groups – including, but not limited to, Black and Indigenous Canadians – and devise strategies to rectify the system's behaviour.

### **6. Consider increasing the use of alternative and restorative justice programs.**

The review should aim to reduce incarceration rates – in general and those among specific demographic groups – by promoting alternatives. This should include an inventory of tools at the disposal of law enforcement and the courts, but also an explicit statement on the legitimacy and desirability of their use as well as appropriate funding levels to support them.

### **7. Reconsider the structure of the criminal justice system and the interactions of the many actors involved by putting the individual at the centre.**

Too often, reforms are considered from the perspective of specific jurisdictions, which leads to proposals that are assessed based on their impact on the actors in the system, their mandates and responsibilities. The review should reject that conceptual frame and consider reforms through the lens of the individual in the criminal justice system.

### **8. Aim to make the criminal justice system "smaller" and create more space for social system interventions.**

Rather than bringing more social services and supports *into* the criminal justice system, the review should aim to reduce the system's reach and allow for more individuals and more cases to be dealt with *outside* it. The goal should be to reduce the number of people who are entangled in the criminal justice system.

### **9. Be developed and implemented in full collaboration with the provinces and territories, as well as Indigenous leaders and governments.**

The interdependence of criminal justice and other social systems requires collaboration not just among those who work in the system, but also among governments. Meaningful, long-term progress depends on it.

**10. Include real public engagement to build trust in the criminal justice system and support for the reforms.**

Building public support for the reforms will be crucial, especially if it includes an examination of the values and principles that underpin the criminal justice system. The review's success will depend on how legitimate the reforms are seen to be in the eyes of the public.

**11. Consider building a learning component into the criminal justice system through additional research capacity, information sharing and ongoing adjustments to the system's behaviour based on best practices.**

The reform should look at mechanisms that would allow the criminal justice system to learn from its own experience and adapt to changing circumstances.

## CONCLUSION

It was often suggested during the round tables that, in reforming the criminal justice system, the government would do well to adopt an approach not unlike that pronounced by the medical profession: *first, do no harm*. Criminality is a serious problem that requires a robust policy response. But the reform should also acknowledge that too often we may be using instruments of criminal justice to address social problems.

A "social determinants of justice" approach to reform acknowledges the idea of punishment, but it also emphasizes rehabilitation and puts individuals, their circumstances and surroundings, at the centre of the system. Far from being "soft on crime," this approach aims to deploy the system's resources more effectively to find more lasting resolution to problems. The goal is better outcomes for victims, accused, offenders, and communities, instead of more time served.

This approach also recognizes the critical importance of responding to each individual's case. As many participants in these round tables argued, our system is based on the notion that it is objective and neutral, when in reality it is often neither of these things. Justice is not blind, and perhaps it should not try to be. Let the system acknowledge the particulars of a case, tailor its response to more effectively address them, and aim for equitable rather than equal treatment.

## APPENDIX A

### Round Table Agenda

Edmonton, Alberta – April 17, 2018

Montreal, Quebec – April 20, 2018

Toronto, Ontario – April 24, 2018

Halifax, Nova Scotia – April 25, 2018

*All the sessions were moderated by IRPP President Graham Fox*

#### Welcome and Introductions

- Word from the facilitator – recognition of traditional territory
- Go-around for participant introductions
- “Rules of engagement” (Chatham House Rule)

#### Session I - The Challenge Before Us

- What are some of the biggest challenges faced by individuals going through the system?
- In your experience, what tends to be missing from current criminal justice system (CJS) responses to individual cases?
- How do other organizations/social systems interact with the CJS, and how can we characterize the alignment or communication between them?
- What are the most urgent issues that need to be addressed?
- Where and how do participants see themselves/their organization fitting within an integrated criminal justice approach?

#### Session II - Building Collaboration

- How can we break down or work beyond traditional silos and build bridges between/among social systems?
- Is there a better way to structure the linkages and relationships? Where is there flexibility to foster collaboration? What models work well?
- What needs to change/what elements do we need to work on to address the overrepresentation of vulnerable populations in the CJS and improve outcomes for individuals, families, communities, and for the CJS and other systems?
- How can front-end on-ramps (leading to CJS contact) be targeted for better outcomes? How can off-ramps to other systems be created/strengthened?
- How can we get to a broader system with wraparound services? How might those wraparound services be provided and coordinated?

#### BREAK

#### Session III - Making Change Happen

- What opportunities does the Criminal Justice System Review offer to promote better outcomes for Canadians?

- What solutions would you identify as priorities?
- What are the things we absolutely must get right, and what are the traps to be avoided?
- What can/should be accomplished in the short term? From there, what does a longer-term reform agenda look like?

### **Closing Remarks**

- Reminder of next steps
- Thank you

## APPENDIX B

### Round Table Participants

#### Edmonton

- Joan Baker, YMCA of Northern Alberta
- Angela Bressan, Criminal Justice System Review Secretariat, Department of Justice
- Holly Campeau, University of Alberta and the Global Justice Lab (Munk School of Global Affairs, University of Toronto)
- Kourch Chan, e4c Alberta
- Jennifer (Jenna) Forbes, Vancouver Aboriginal Transformative Justice Services Society
- Jan Fox, Reach Edmonton
- Hadley Friedland, University of Alberta, Faculty of Law
- Grace Froese, Edmonton Drug Treatment Court Service
- Laura Hoversland, Council of Yukon First Nations
- Janice MacKinnon, University of Saskatchewan, School of Public Health
- Benjamin Perrin, University of British Columbia, Peter A. Allard School of Law
- Gary St-Amand, Bissell Centre
- Michelle Stewart, University of Regina, Justice Studies
- Cheryl Whiskeyjack, Bent Arrow Traditional Healing Society

#### Montreal

- Stéphanie Archambault, Aide juridique de Montréal/Laval
- Serge Charbonneau, Regroupement des organismes de justice alternative du Québec (ROJAQ)
- Michelle Côté, Section Recherche et planification, Service de Police de la Ville de Montréal (SPVM)
- Julie Desrosiers, Faculté de droit, Université Laval
- François Dulude, Dulude Law
- Émilie Fortier, Old Brewery Mission
- Michèle Goyette, Ordre professionnel des criminologues du Québec
- David Henry, Association des services de réhabilitation sociale du Québec
- Mylène Jaccoud, École de criminologie, Université de Montréal
- Josiane Loiselle-Boudreau, Femmes autochtones du Québec
- Simon Pérusse, Centres d'aide aux victimes d'actes criminels (CAVAC)
- Émilie Raymond, Éducaloi
- Louis-Philippe (LP) Thériault, Mounted Police Professional Association of Canada (MPPAC)
- Janique Venne, Criminal Justice System Review Secretariat, Department of Justice

#### Toronto

- Constance Backhouse, University of Ottawa, Faculty of Law
- Jane Barker, Nipissing University, School of Criminology and Criminal Justice
- Angela Bressan, Criminal Justice System Review Secretariat, Department of Justice

- Beverly Jean Daniel, Ryerson University, Faculty of Community Services – Child and Youth Care Program
- Kofi Hope, CEE Centre for Young Black Professionals
- Mike Jeffrey, Toronto Police Service, 51 Division, Aboriginal Liaison Officer
- Michelle Keast, The Centre of Research, Policy and Program Development, John Howard Society of Ontario
- Kyle Kirkup, University of Ottawa, Faculty of Law – Common Law Section
- Kaitlyn McLachlan, University of Guelph, Department of Psychology
- Anthony Morgan, Falconers LLP
- Chad Nilson, University of Saskatchewan, Centre for Forensic Behavioural Science and Justice Studies
- Akwasi Owusu-Bempah, University of Toronto, Mississauga, Department of Sociology
- Orna Raubfogel, City of Toronto – Toronto Community Housing Corp.
- Yafet Tewelde, For Youth Initiative

### Halifax

- Tammy Augustine, Elsipogtog Health & Wellness Centre
- Nancy Baroni, Housing Nova Scotia
- Joanne Bernard, Easter Seals Nova Scotia
- Janelle Comeau, Nova Scotia Health Authority, Government of Nova Scotia
- Pam Glode-Desrochers, Mi'kmaw Native Friendship Centre
- Adelina Iftene, Dalhousie University, Schulich School of Law and Health Law Institute
- Nancy MacLellan, Community Services, Government of Nova Scotia
- Stephanie McInnis Langley, Nova Scotia Advisory Council on the Status of Women
- Steve Mihorean, Criminal Justice System Review Secretariat, Department of Justice
- Rose Ricciardelli, Memorial University, Department of Sociology
- Amy Siciliano, Halifax Regional Municipality
- Tony Smith, Victims of Institutional Child Exploitation Society
- Diana Whalen, Government of Nova Scotia, Former Minister of Justice





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