

# **RE-INVENTING CRIMINAL JUSTICE:**

**THE EIGHTH NATIONAL SYMPOSIUM**

## **FINAL REPORT**

Fairmont Queen Elizabeth  
Montréal, Québec

January 22/ 23, 2016



# THE EIGHTH NATIONAL REINVENTING CRIMINAL JUSTICE SYMPOSIUM

INNOVATION IN CRIMINAL JUSTICE RESPONSE TO VULNERABLE PERSONS

Montreal, January 22-23rd 2016

Symposium Chair: The Honourable Raymond Wyant, Manitoba Provincial Court

Symposium Facilitator: Mr. George M. Thomson, Senior Director, International Programs,  
National Judicial Institute

## BACKGROUND TO THE SYMPOSIUM

On 22 and 23 January 2016, over one hundred leaders of the criminal justice system met in Montreal for the eighth in a series of unique opportunities for police, corrections, defence counsel, prosecutors, judges, and government officials from across the country to meet and discuss issues relating to the criminal justice system. The primary purpose of these Symposia is to “reinvent” the system by bringing together influential justice system participants and informed outside observers to share, off the record, candid perspectives on and solutions to the challenges of fashioning a responsive, accessible and accountable criminal justice system.

Every year, the Symposium focuses on a different aspect of reinventing and improving the criminal justice system. This year’s theme was the important question of how the system responds to vulnerable persons: **those with significant disadvantages due to historical or social factors, mental health, or addiction, who are disproportionately likely to be offenders or to be victims of crime.** The challenge posed by these self-reinforcing patterns of vulnerability is one of the most difficult facing our criminal justice system. Participants explored what might be done to improve our effectiveness in responding to the vulnerable.

The theme of vulnerability represents a further evolution of ideas and issues considered at past Symposia.

- The Sixth National Symposium, which addressed public confidence in the system, included amongst its recommendations the need to address barriers to justice created by poverty, and the need to bring a special focus to communicating more effectively with those most directly affected by the system, including excluded and marginalized communities, Aboriginal Canadians, and new Canadians.
- The Fifth National Symposium addressed one major element of the challenge the criminal justice system faces with respect to vulnerability: mental health. The participants in the Symposium unanimously agreed that an effective and efficient justice system which

supports a goal of public safety requires responses that address the mental health drivers of chronic intersection with the criminal justice system. If possible and depending on the circumstances of the case, persons living with mental illness should be treated rather than punished. The Fifth Symposium developed a series of recommendations calling, inter alia, for police to be better trained to recognize symptoms of mental illness and to have the capacity to immediately refer the individual to mental health services instead of the criminal justice system; for prosecutors, duty and defence counsel and judges to become better educated on the issues and solutions for persons living with mental illness; and for people living with mental illness to have available additional supports that neither the justice system nor the health system can provide, including affordable and stable housing, a dependable income, and the opportunity to develop employment skills.

- The Fourth National Symposium, taking as its focus contemporary concerns over Canada's mounting remand population, identified as part of its deliberations that youth and aboriginal people were disproportionately represented in that group; and that mental illness introduced significant complexity to bail decisions.

Taken together, these earlier discussions suggest a common thread of concern: the ability of the criminal justice system to respond appropriately to a variety of vulnerable groups and individuals who together form a significant component of those encountering the system.

## PURPOSE OF THE SYMPOSIUM

Past participants were canvassed for their preference regarding the topic of this year's Symposium. From a variety of options, "response to vulnerable persons" was selected as the theme. In past Symposia, participants at times addressed a variety of challenges associated to vulnerability – factors and attributes, whether individual or group-based, which alone or in combination heighten the likelihood of someone experiencing repeated involvement with the criminal justice system as an offender (or as a victim). The intent of the organizing committee was to weave these various strands together in one conversation. The discussion was designed to allow participants to come to a common assessment of the challenges facing (and posed by) vulnerable persons, from both the evidence-based and practical/operational perspectives; and, on that basis, to consider the effectiveness of current approaches and interventions, and to consider what else might be done to improve the system's response.

## FACT SCENARIO

In preparation for the 2016 Symposium, it was acknowledged by participants on the Symposium steering committee that the concept of "vulnerability" required sharpening to differentiate the sense in which it is addressed here from other uses (for instance, to distinguish the concept from that of heightened risk of radicalization). To this end, a hypothetical fact scenario was prepared which highlighted several circumstances and case characteristics held to be typical of those experienced by vulnerable persons.

The fact scenario, highlighting the fictional case of "Mark," whose repeated contacts with the justice system were accompanied by a history of family-related dysfunction, substance use, and mental disorder, was used as a tool for participants to use in organizing their discussion at the Symposium,

particularly as regards problem identification in the initial sessions at the vent. The document is reproduced here and included as Appendix 1.

## DAY ONE, FRIDAY JANUARY 22

### PROBLEM DEFINITION AND SYSTEM RESPONSE

#### *WHO ARE THE VULNERABLE IN OUR JUSTICE SYSTEM? HOW ARE WE RESPONDING?*

The Symposium commenced with an initial discussion to ground participants in a common understanding of the challenge: who are the vulnerable in our justice system? An initial presentation provided participants with an overview of research findings on vulnerable populations, with a particular focus on the interaction between homelessness, substance use, and mental illness as risk factors. A panel discussion, which included representation from the judiciary, prosecution, police, corrections, legal aid, and community service organizations, followed the lead presentation. The panel reflected both on the initial presentation and on the fact scenario, from the perspectives of their various professional vantage points. There was consensus amongst the panellists that the fact scenario was a typical situation, and that the key points made in the lead presentation regarding the challenge of complex, concurrent factors resonated with the day to day reality of criminal justice. Panel participants noted that it is not uncommon to encounter a fact situation similar to the one presented in the “Synopsis”. Frequently, the type of detailed information about an individual, such as that contained in the “Background” is not available to all justice system participants. When such information is available it invariably assists in determining the appropriate outcome.

During the first morning, participants were also provided with a presentation reviewing the current capacity of the criminal justice system to respond to the vulnerable, reviewing research on effective interventions. The presentation underscored the need for a systemic approach as better outcomes will not be achieved by simply encouraging a few isolated initiatives, however promising they might appear to be. The various areas in which interventions hold promise include prevention (focused on the young and on support for those with mental illness and addictions), diversion (including problem solving courts, targeted diversions and restorative justice), addictions treatment, effective reintegration programming, and more effective use of sentencing.

Another presentation highlighted some concerns about courts imposing rehabilitation requirements. Difficulties with this approach include determining who is most in need of scarce rehabilitation resources, and which treatment options are most effective. Better program evaluation is necessary in order to enable the appropriate identification of “targets” for intervention.

### PLENARY DISCUSSION

In small groups, and subsequently in plenary, participants then responded to this first set of presentations. Key points raised in this discussion fell into the following themes.

*MANY DIFFERENT FACTORS CAN CONTRIBUTE TO A COMMON OUTCOME OF VULNERABILITY*

Symposium participants recognized in discussing vulnerability the need to be careful about generalizing from group characteristics to the circumstances of any one individual, and thus labelling that person unjustifiably. Echoing the presentations, there was also recognition that problems experienced by vulnerable people rarely occurred in isolation, but were layered or co-occurring.

Beyond the issues of mental illness, addiction and homelessness identified by the speakers, participants noted numerous other attributes which in their experience contributed to vulnerability and often overlay each other. These included but were not limited to developmental delays and brain damage (including fetal alcohol syndrome); victimization and particularly child victimization; child maltreatment; the impact of residential schooling; poverty and related issues such as physical health and literacy; geographic isolation and lack of family social support; transience and “invisibility”; systemic discrimination; and learned distrust of the system.

It was also noted that the criminal justice system itself had the capacity to create or exacerbate vulnerability unintentionally: here, participants referred to the impact of a criminal record; chaotic life situations motivating guilty pleas; the way in which system participants describe offenders; and the overuse of bail conditions and subsequent failure to comply charges as a means of attempted offender control.

*BETTER INFORMATION LEADS TO BETTER OUTCOMES, BUT INFORMATION SHARING IS A PROBLEM*

Participants frequently returned in plenary discussion to the need for (and challenges of) better information sharing, to allow for informed decision making regarding vulnerable accused and offenders at all stages of the criminal process.

Several separate observations were made. First, there are difficulties sharing information within the system itself, from e.g. police to crown to corrections. Where the will to share exists, it is often hampered by the lack of opportunity to share. This may be due to the lack of integrated systems, lack of established and approved forums in which to share information delay in or absence of information, and lack of cross-jurisdictional data sharing regarding transient groups. Second, there is a lack of clarity around privacy issues (real or perhaps perceived) further limiting sharing, and role uncertainty about whether one is obliged and/or empowered to gather or share information. Third, information sharing in the interests of the individual accused may come into conflict with the essence of adversarial process: defence counsel may not want the information shared unless immunity is granted under an allowable mechanism. Finally, legal limitations on some types of information sharing such as exist under provincial mental health statutes, and the lack of an ability to compel other sectors to provide data, present barriers which may be insuperable in the absence of legislative change.

*ROLE CLARIFICATION WOULD IMPROVE QUALITY AND TIMELINESS OF INFORMATION SHARING*

Participants noted that there were opportunities at different stages of the process for different people or organizations to share information in the interests of better outcomes for vulnerable persons, but a lack of clarity regarding “who” and “when” served only to inhibit sharing. There is a need to define and signal roles and responsibilities, as in the Quebec model which involves those

within and outside the justice system who have relevant information. Everyone potentially has a role, depending on the case, and the key is a co-ordinated approach.

Leadership of such coordination may involve several options: police as first contact, who could then share info with others in the system; Crown in a co-ordinating role, but not constraining the actions of others *i.e.* defence; probation in a co-ordinating role, in light of extended contact with the offender; and defence counsel, who have the unique role of advocate for the accused/offender. With appropriate capacity created, community actors may also be identified for a leading role in the gathering and provision of information. As an alternative to one actor or agency taking the lead, integrated teams offer another approach whereby the right information reaches the right hands in a timely manner.

In a resource-scarce environment, identification of those most vulnerable is a critical information input. Risk tools are available, and in wide use in the correctional environment, and may be used to inform other actors within the criminal justice system for effective triage. Sharing knowledge of options available via restorative justice may be a key support to such triage efforts.

### COMPARATIVE APPROACHES IN RESPONDING TO THE MOST VULNERABLE OFFENDERS

On the first afternoon, participants were asked to consider three broad approaches in responding to the most vulnerable offenders at different stages:

- a) Community-based, multidisciplinary programs that operate outside the criminal process;
- b) Post-charge alternative programs that use innovative measures to find opportunities for early resolution that address the needs of the accused person; and
- c) Court-based programs to better identify the needs of the vulnerable offender or to provide judge-mediated access to services or treatment.

The objective was to identify the benefits and risks associated with each approach, the relative advantages of intervening at different stages of the criminal process, those persons most likely to benefit, and measures that increase the likelihood of success.

Examples were given of each approach and participants were encouraged to identify other examples of promising programs and approaches.

The three examples considered included:

- **Saskatchewan's Hub approach.** The hub model provides immediate, coordinated and integrated responses through the mobilization of resources to address situations facing individuals and/or families with acutely elevated risk factors, as recognized across a range of service providers;
- **The Peacebuilders program.** Peacebuilders is a community-based, restorative justice alternative that enables communities to participate in the rehabilitation of young people (ages 13 to 20) who face sanctions under the Youth Criminal Justice Act (YCJA) or the Safe Schools Act (SSA); and
- **Gladue Court and therapeutic courts.** Gladue Courts are courts that involve the community and ensure that more complete, culturally sensitive information about the Aboriginal offender before the court is available to the sentencing judge. Treatment and

Community Courts are courts that provide access to needed treatment or services under the supervision of the judge.

## PLENARY DISCUSSION

Participants considered these and other approaches in small table discussions, and returned to plenary, at which time the following themes emerged.

### *DIFFERENT APPROACHES WITHIN CRIMINAL JUSTICE SHOULD COMPLEMENT EACH OTHER, JUST AS CRIMINAL JUSTICE SHOULD COMPLEMENT OTHER SYSTEMS' WORK*

Participants viewed each approach as having value, but not in ways which were mutually exclusive. As complementary approaches they form part of a more powerful system. Similarly, participants saw criminal justice interventions as simply one type of response to the vulnerable, and one which should be used with restraint. The goal should be the earliest intervention possible with the greatest flexibility. Flexibility is enhanced when certain behaviours or drivers may be streamed out of the criminal justice environment (e.g. addiction, mental health) in appropriate cases. Where criminal justice interventions are required, again the preference was for early intervention, where appropriate (for instance, by police well before court).

### *AVOIDING UNNECESSARY CRIMINALIZATION OF THE VULNERABLE REQUIRES STRONG LINKAGES TO COMMUNITY AND TO OTHER SYSTEMS, AND A COMMITMENT TO LEARNING AS WE GO*

Some participants saw the criminal justice system as having significant limitations viewed in isolation. Of the various social systems at play, it is the least flexible system in terms of responding to these issues and has the least flexible responses and resources. Other systems can intervene earlier and more flexibly. It is a challenge for the criminal justice system to adopt the goal of overall marginal risk reduction. Standards or rules that limit discretion, and strict program entrance criteria, pose a challenge to the flexibility often required in responding to the vulnerable. While the use of conditions and subsequent breach charges has been growing, there is no evidence to support that these are effective over the longer term in correcting the behaviours in question. It was also observed that the Criminal Code and provincial Mental Health Acts are “blunt instruments” in dealing with vulnerable persons.

In seeking to ensure that the criminal justice system addresses only the most appropriate cases, effective decision rules must be paired with meaningful and well-elaborated options for diversion. The system should avoid net widening – bringing people into the system who should not be there – but to do so requires application of clear criteria including the seriousness of offence, the assessed willingness and capacity of the accused/offender to participate in remedial interventions, and the extent to which he or she is able to take responsibility (whether or not this involves a guilty plea).

The extent to which the criminal system is able to engage in effect diversion and or remediation is also limited by the limitations of any structures established (such as specialized courts), as resources will dictate narrowing of focus and thus potentially lead to exclusion of some potential candidates. Similarly, the very real challenge of self-represented vulnerable accused places additional burden on courts and others seeking to order or recommend the most appropriate disposition.

In light of these limitations and constraints, participants felt it critical in responding to the vulnerable that the criminal justice system forge stronger linkages with other relevant systems – e.g. health, immigration, or education – as well as with community resources. While community engagement is not a new goal, participants felt strongly that as an objective it needed to be locally relevant, adapting to the resources available in the particular community and taking advantage of existing, important relationships. Defining community is important – what people need is their own community, as opposed to community at large. It is the power of existing relationships that will bring people to the table where resources are stretched. The system needs to work on this basis to create understanding of the source of and rationale for referrals, and strengthen relationships of trust. While the courts must have appropriate oversight, effective community relationships focused on the vulnerable connect to a range of systems and supports and must be distinct from the courts themselves.

Participants recognized that building and strengthening relationships which would allow for appropriate streaming and referral will require willingness to consider alternative approaches to operations, and willingness to build a culture of experimentation and measurement the better to establish “what works.” Thinking differently may involve a look at incentivising behaviour such as changes to the legal aid tariff, realignment of existing investment, importing approaches from the youth justice system as regards tools and principles to deal with the very vulnerable, and broadening access to diversion to create multiple opportunities for success.

In learning as we go – building evidence in support of effective interventions – some participants suggested that the system could give more serious consideration to random assignment to programs, which is the accepted standard in other areas to permit evaluation, and to building measurement into our program designs so there is relevant data with which to assess (and scale) our work.

Participants noted that there were numerous other models and areas of work which may also be considered and/or expanded in responding to vulnerable populations. These include successful models such as BC’s assertive outreach teams and pre-charge diversion; the Housing First initiative which seeks to stabilize individuals (linked to bail conditions) and then deal with recurrent issues; and Ceasefire, a police program to provide community support in critical incidents (like shootings). Areas where participants saw potential merit included early involvement of victims (as practised in US states under the Reinvestment Model); the assertive reinvention of remand as an intervention rather than a holding facility; better use of data analytics; the use of a public health approach; raising the upper age limit for the Youth Criminal Justice Act to allow greater latitude in dealing with young adults; and limiting access to corrections spaces to force the system into alternative dispositions rather than the default of incarceration.

#### *SPECIALIZED AND PROBLEM-SOLVING COURTS CAN OFFER SIGNIFICANT BENEFITS BUT REQUIRE CAREFUL ANALYSIS PRIOR TO ADOPTION*

Participants saw numerous positive aspects to innovation at the court level. Some participants noted that broader based problem-solving or “community” courts were preferable to specialized courts with respect to vulnerable persons, given the broad range of attributes and challenges contributing to vulnerability. Community courts, unlike specialized courts, tend to deal with more than one issue at a time as opposed to having restrictive entry criteria. Some participants felt that specialized courts can institutionalize pathology and reinforce dependencies. However, it was

noted that there were recent innovative approaches in Montreal with respect to specialty courts and at risk populations, addressing *e.g.* the homeless and elderly victims, and identifying vulnerabilities in victims as well as offenders, which were offsetting concerns over excessive specialization.

Other points raised by participants regarding court innovation included highlighting the importance of connections and transitions between problem solving courts when dealing with concurrent disorders; the inequity associated to limited access to/lack of resources for court innovation outside major urban centres; the question of effect size/proportionality (even if the court is having a positive effect, do those outcomes justify the outlay compared to alternative use of resources such as training or increasing community capacity; and the continued importance of evaluation evidence rather than personal support from individual champions of such courts.

#### *PARTICIPATION IN DEVELOPING INTERVENTIONS MUST BE BROAD-BASED AND ENERGETIC*

In considering who should be “at the table” in populating effective networks for intervention and diversion in the interests of vulnerable persons, participants focused on leadership and vision as well as the breadth of participation. It is obviously necessary to have passionate leaders who can initiate the programs, and cement the idea of catalyst, or a rationale, that is recognized by all at the table. In circumstances of scarce resources, that scarcity may itself be a catalyst. As well as builders, in developing novel approaches there need to be sustainers: visionaries who can look beyond pilot projects to longer term sustainability.

Leadership must be complemented with broad participation. Given the range of circumstances leading to vulnerability, many of which are complex and stem from long standing social, health and/or family deficits, justice personnel must seek active collaboration with health and education leaders, community leaders, businesses, and other sources of community strength. Participants urged consideration of increased cooperation across relevant departments of government, including the use of issues (in this case, the situation of vulnerable people within the criminal justice system) rather than departments or ministries as the framework for funding. Participants also encouraged the inclusion of some actors who are not always invited to the table, such as defence counsel and legal aid, as well as proactive communication and partnership with those who may otherwise create unintended roadblocks to collaboration.

## DAY TWO: SATURDAY, JANUARY 23

### EVIDENCE AND DATA GAPS ON VULNERABLE OFFENDERS: THE NATIONAL PERSPECTIVE

At the outset of the second day of the Symposium, participants were provided with a review of national statistics on vulnerable groups, including levels of victimization. Key findings included the following:

**Youth:** While incidents are rarely reported to authorities, children and youth are five times more likely than adults to be sexually assaulted, with just under a third of Canadians reporting physical or sexual abuse by an adult prior to 15. Abuse victims are subsequently twice as likely to be victims of another violent crime. Regarding offending, youth crime patterns underscore the need for early intervention at the first sign of repeat contact.

**Mental health:** A fifth of police contacts involve someone with a mental or substance use disorder, and people with a mental health problem are over three times more likely to be arrested than those with no mental health problem. Canadians with a mental health problem more commonly have a weak sense of community belonging, a history of child maltreatment, a family member with mental health problems, and/or prior contact with child protection services.

**Homelessness:** Homelessness effectively doubles the likelihood of violent victimization. Canadians with a mental health problem are six times more likely to be homeless. Aboriginal Canadians are three times more likely to report being homeless in their lifetime than is the non-aboriginal population.

**Aboriginal Canadians:** Both criminal involvement and criminal victimization are significantly higher for the Aboriginal population, including serious crime categories, often by a factor of several times. Aboriginal Canadians are more likely to have been victims of childhood maltreatment, to report a mental health condition, to have a history of homelessness.

**Women:** Women for the first time have higher violent victimisation rates than men, as sexual assault rates have stayed constant while other violent crimes have declined. Regarding victimization of Aboriginal people and controlling for all risk factors, Aboriginal identity does not stand out statistically, but being an Aboriginal woman does.

#### POST-SENTENCING CORRECTIONS-BASED INTERVENTIONS

Following this overview, participants' attention at the Symposium returned to the question of effective interventions to address and mitigate vulnerability. The Symposium heard a presentation on the **Integrated Offender Management/Homeless Intervention Program** developed in British Columbia. IOM/HIP as a program delivers, with cross-sectorial support and collaboration, integrated services and resources to the highly vulnerable homeless population, many with mental health and addiction issues. Program evaluation of initial sites shows significant benefit in reducing reoffending within two years, and an aggregate reduction in offence seriousness for those who did re-offend. The program has also shown success in facilitating access to subsidized or market housing, income assistance and integrated health services and supports, employment, and FASD screening.

#### PLENARY DISCUSSION

In discussing these two sets of remarks and related ideas, participant comments fell into several themes.

#### *SOME CRIMINAL BEHAVIOUR IS DRIVEN BY BASIC, REMEDIABLE HUMAN NEEDS*

Research is increasingly telling us that absence of basic human requirements – like shelter – are if unaddressed likely to drive criminal behaviour. In addition the functions of our system itself can lead to unintended and spontaneous shortfalls in basic needs – for example, the timing of release from corrections may mean putting the client in immediate need of shelter and food. Systems assistance is required in negotiating services to ensure client needs are met and avoidable criminogenic circumstances are indeed avoided.

### *COORDINATED RESPONSES SHOW GREAT PROMISE AND SHOULD BE PROMOTED ASSERTIVELY*

Participants expressed broad support for collective collegial responses which engaged institutions and service across all sectors, avoiding silos. Integrated case management has been shown to work, and its effects are amplified when a greater number of criminogenic and social factors are addressed, and proven programs and therapies (e.g. cognitive-behavioural therapy) are applied. Thus, many more players need to be at the table. In addition, there is an appetite for coordination over targeted services for aboriginal peoples, female offenders, and other vulnerable groups. Integrated services and interventions made an impression on participants, but there is a knowledge gap: how do we learn what's out there more consistently? What are the barriers to disseminating and learning from these efforts? Information on IOM/HIP was well received, with participants noting that cost implications and partnership negotiations would be required in any jurisdiction to bring other actors to the table and invested to treat the same complex needs population.

Recent innovation shows how probation services, when integrated with responses to basic, health or social needs, have significant potential for improving outcomes and breaking the cycle of crime. More robust integration and service provision is the next step, as given the benefits of IOM/HIP there remains a lot of responsibility on probation relative to other community services and offender support organizations. There may be value in probation following custodial sentence to underpin the next stage of care supporting reintegration. The moment of reintegration is key, and requires early release planning with a collaborative approach, and equal access to services (as punishment should not extend beyond sentence, but it often does). The most promising practices in reintegration involve "external" services and case managers integrating into corrections facilities prior to transition case manager who can oversee transition.

The implications of these findings led some participants to reflect on the ineffectiveness of short periods of incarceration, which served to interrupt key services and supports but provided too little time to engage in effective collaborative programming. Short sentences, in turn, place a lot of pressure on the system and particularly on probation.

### *CORRECTIONS IS IDEAL FOR INTERVENTION, BUT WE CANNOT IGNORE EARLIER OPPORTUNITIES*

As the system engages in coordinated efforts to ensure people are not unnecessarily criminalized due to their vulnerability, participants identified early diversion as an ongoing priority. This can be through existing and enhanced practices such as pre-charge and police diversion. It may also be through innovation of new approaches such as "accused services" beyond the existing legal aid paradigm. Noting that such approaches are largely absent, it was suggested that (like IOM/HIP integration of services on release), this might be developed for people not in custody.

### *RESEARCH HAS A KEY STRATEGIC ROLE TO PLAY*

Participants noted that an important by-product (or perhaps a goal) of collaborative work in which data is shared as part of the model is important institutional learning. As an example, Vancouver Coastal Health Authority learned through justice collaboration that the correctional system was releasing people who were then immediately admitted to hospital: this represented a group whose post release costs were very high and whose needs could have been dealt with more cost-effectively by an Assertive Community Treatment team. This was a research finding and exposes opportunity for further partnership and coordination. There are things we know we know, and things we

know we don't know. Collaboration and research can identify the things we didn't know we didn't know.

#### *THERE REMAINS THE NEED TO BE SERIOUS ABOUT EVIDENCE BASED PRACTICE*

Participants felt that if the criminal justice system wishes to make a significant impact on the situation of the vulnerable within the system, there must be a commitment to identifying and evaluating "what works". As resources are scarce, we must measure not simply the effects of our interventions, but whether those interventions (even if effective to some degree) are the best use of resources compared to the alternatives.

Participants expressed an interest in assessing accepted practices against their purported effects. Practices such as Gladue reports have become part of our system. Is there something in place to measure their effectiveness? Is it actually the best way to deal with overrepresentation of Aboriginal peoples in the justice system? We engage in significant numbers of diversionary programs. Are they working, and are they effective in reducing reoffending? Similarly, participants felt that there was a need for effective comparison across jurisdictions to inform our collective efforts at developing useful interventions.

#### *STRUCTURED DATA SHARING HELPS US UNDERSTAND THE POPULATIONS WE SEEK TO ASSIST*

Participants noted the promise of bring together data from justice, health and other social system, in ways which respect and comply with the spirit and letter of privacy legislation (regarding which there remains considerable uncertainty within most systems). Using data in this manner, as has already been pioneered in some jurisdictions, would allow us to track key outcomes and measure the effectiveness of our interventions. Such a step might allow us to measure the impact of the effects of incarceration after release more comprehensively, helping to figure out what the real impact is and where the costs are; it would allow for better understanding of sexual violence, crime and victimization rates in indigenous communities and homeless communities; and it would give us an additional lens on the remand population: why are they there, and why is it growing. Data sharing can also bring focus on racialized/marginalized youth, especially Aboriginal youth, through longitudinal studies which get to the heart of what vulnerability is and how it may be mitigated.

## RECOMMENDATIONS

### PLENARY DISCUSSION

In the final session of the Symposium, participants were asked to reflect on the two days' discussion of the criminal justice system's response to the vulnerable, and to make recommendations on key elements that increase the likelihood of success of those responses. Recommendations from participants emerged in the following ten areas.

1. **Effective responses to the vulnerable require criminal justice system leaders to engage other systems seriously and at the highest level.** The broader adoption of viable, promising practices hinges on a number of things: whether they can be made politically actionable, whether our sectors can work together as one with other systems, whether we have the depth of relationships with leaders in other systems to deepen the application of resources and identify genuinely shared priorities (around *e.g.* mental health).

2. **Understanding vulnerability and the effectiveness of our responses requires a sustained commitment to research.** While we have made some promising steps, building our understanding of what works is a work in progress requiring a long term commitment to research. We must build relationships with researchers, who in turn need to deliver reliable evaluations of key programs to allow them to be replicated elsewhere. There are also key attributes of vulnerability we need to understand better, such as risk versus resilience, and key attributes of offenders which are only revealed through cohort study over time. Research is critical in assessing the effectiveness of traditional practice compared to their intent, such as bail conditions, probation, and parole: what is the evidence to support their use?
3. **Better understanding of the relationship between youth victimization and vulnerability to offending is required.** Victim issues are not properly funded, which is a concern as there is evidence to suggest that those victimized (particularly when young) are more vulnerable to becoming offenders later in life. We must understand the role of victimization and why it can lead to offending; similarly, we need to understand the contrary phenomenon of resilience in spite of victimization. Our work needs to coincide with work on children with adverse experiences, truancy, preventative programming in communities, and child protection, to develop a more holistic model of preventing life-course vulnerability.
4. **Re-imagining our response to the vulnerable requires us to think beyond existing frameworks and institutional approaches.** While speciality and problem-solving courts have brought wellness components into the formal justice system, we require even more latitude in the system as a whole when encountering the vulnerable. There is a need for even greater community involvement, and perhaps the need to revisit the use of the adversarial model for this population. We need to work more directly in assisting the accused, or indeed the arrested, to get them support to avoid continual criminalization, and to maintain consistent opportunities for diversion throughout the system.
5. **Effective response to vulnerable persons in the criminal justice system must include increases to current levels of legal aid funding.** Participants identified on multiple occasions that commitment should be sought from the federal government regarding increased funding of provincial legal aid systems.
6. **Meaningful, symbiotic partnerships at the operational level must extend beyond the criminal justice system.** The coordination of efforts to respond to the vulnerable needs to be a public policy priority and should be championed by justice actors. This coordination should occur with community organizations, other levels of government, and other social services and systems, and should recognize the various points at which intervention can occur (preventive, pre-charge, in-system, post-sentence, post-release). There is ample rationale and leverage to improve co-operation across sectors as all are facing a funding crunch. This coordination is a necessary condition for effective response.

7. **Specific mechanisms should be identified which will allow for coordinated responses.** Key questions must be answered to get to “the next level.” What vehicles will move this work forward, nationally, provincially or locally? How do we incentivize a change in focus from relying on interventions by particular sectors to looking at the entire picture and working collectively on key transition “moments” (*i.e.* when a person is victimized or marginalised)? We need to understand how to make these coordinated approaches work from a public administration point of view; for example, by developing and disseminating process maps from jurisdictions that have had success in getting everyone around the table to find best practices for actualization, and via a focus on business planning which shows how investments result in measurable results.
8. **In dealing with vulnerable persons, the corrections function should be reimagined/rebranded in light of the range of collaborative options and positive opportunities being demonstrated.** We have an opportunity, which may be aided by renewed federal attention to sentencing, to bring greater focus on rehabilitation and judicial discretion in disposition, and less on punishment. Use of conditions which may “set people up to fail,” mandatory minimums, and arguably counterproductive short periods of incarceration should be revisited in favour of the demonstrated benefits of integration to bring in case management, housing stabilization and wraparound services. It may be useful to address whether the Code could be amended to create the ability to impose a health-informed or related sentence. Correctional systems require integration with related services in ways which improve client outcomes for justice and non-justice services alike. We similarly need to advocate for necessary supports in the community, such as *e.g.* the temporary absence program in Alberta.
9. **Aboriginal peoples require specific focus in efforts to respond to and reduce vulnerability.** The needs of vulnerable offenders (adult and youth) within the indigenous population are acute relative to any other broad grouping. Recognizing the enduring disadvantages that Aboriginal peoples face in our system of criminal justice, there is a need to promote programming targeting an Aboriginal client base specifically within any more general effort to address vulnerability.
10. **Appropriate, well-managed information sharing at the aggregate and individual levels is key to progress on vulnerability.** Many of the most promising approaches discussed at the Symposium rely on information sharing, and better linkages between systems having distinct data. Recognizing the societal benefit being pursued, we must routinely recall the citizen’s right to review information for accuracy and ability to be forgotten in certain respects, and exercise due care and attention in this area. Similarly, consistent use provisions require us to be attentive to the ways in which information is shared or combined. That said, privacy legislation is not intended to promote inaction, and participants felt strongly that with assertive education, information could be shared legally and ethically in many instances where there has traditionally been a reluctance to share.

# APPENDIX 1: FACT SCENARIO

## SYNOPSIS

*Accused: Mark Brown, DOB June 13, 1995.*

*At 1:06 a.m. on September 30, 2015, the accused, Mark Brown, entered the Shell station convenience store on the outskirts of North Bay on Highway 11. He wandered around the store for a few minutes, selecting a chocolate bar. He went to the till to pay. He handed the cashier \$2.00 and when she opened the register to get change, the accused jumped over the counter, shoved the cashier, grabbed a handful of bills from the till and exited the store. The police arrived on the scene within minutes, and very shortly thereafter apprehended the accused hitchhiking on highway 11. He appeared to be intoxicated by alcohol. Four hundred and twenty dollars were recovered.*

*He stands charged of Robbery and Breach of Probation.*

*The accused is 20 years old with the following record:*

*April 2009 (at age 14): Theft under, Fail to appear. Disposition: conditional discharge, 12 months' probation.*

*September 2011 (at age 16): Theft under. Disposition Suspended sentence, 12 months' probation (in light of 3 days pretrial detention)*

*June 2012 (at age 17): Theft under, fail to appear, fail to comply, Resist police, Assault police. Disposition 90 days open custody followed by 18 months' probation*

*July 2013 (at age 18): Theft under. Disposition: 20 days jail (in light of 10 days pretrial custody)*

*January 2014(at age 19): (Sexual Assault) Disposition: 6 months jail, 2 years' probation, s. 109 for 10 years, SOIRA order, DNA order*

*On each charge other than the sexual assault charge, Mr. Brown pleaded guilty and was represented by Duty Counsel. He was represented on the sexual assault but also pleaded guilty and was sentenced on a joint submission, with credit for one month pre-trial custody.*

*He is currently of no fixed address. When questioned by the police he indicated he was hitchhiking to Timmins where he used to live.*

*Duty counsel spoke briefly with the accused. He did not seek bail and pleaded guilty to all charges. He is sentenced to 90 days.*

## *BACKGROUND*

*The Brown family is in crisis.*

### *DENISE (THE MOTHER)*

*Denise is a single mother. She is an alcoholic and is currently on social assistance, living in a rooming house in Toronto. Denise has had several long periods of sobriety in the past where she was employed but is currently unemployable due to her alcoholism and drug abuse.*

*Denise is the only child of Carol and Joe Brown. Joe was an abusive alcoholic. Both Denise and her mother Carol were physically abused by Joe. Denise ran away from home in Timmins at 15 and ended up on the streets of Toronto. She developed a serious alcohol and drug addiction. She became pregnant. When Mark, was born, Denise's mother, Carol, took custody of Mark and ultimately adopted him. She told Denise not to come home to Timmins until she was sober.*

*When Mark was around five Denise had managed to straighten out and returned to Timmins to live with Carol, her mother.*

*Denise started drinking again when Mark was 12. Her behaviour deteriorated, and she was fired from her part time job. The family was poor to start with and the absence of any regular contribution from Denise created even more hardship. When she drank, Denise became verbally abusive to her son and mother. When Mark was around 15, Carol kicked Denise out of the house. Denise returned to Toronto. Denise currently resides in a rooming house in Toronto.*

### *MARK (THE SON):*

*Mark is a low-functioning 20 year old with a history of conflict with the law. He was adopted by his grandmother, Carol, when he was an infant. Mark has lived with his grandmother, Carol, in Timmins since that adoption. Mark witnessed his grandmother Carol being abused by Joe, her husband, on numerous occasions.*

*Following Joe's death, Denise, then sober, resided with Carol and Mark.*

*Mark was diagnosed as displaying symptoms of fetal alcohol syndrome at the age of five. He has multiple learning disabilities, has poor impulse control, poor memory, social perception and judgment, limited attention span and is prone to agitation and combativeness. Mark has self-medicated since he was 12 years old, consuming alcohol and marijuana on a regular basis.*

*Mark completed grade 6 with considerable difficulty and has earned a few credits towards grade 7. Sporadic attendance and behavioural issues played a part in the need to transfer schools frequently. Mark last attended school when he was 15. An incident occurred at school and he refused to ever return.*

*The best years in the life of this family were after Joe's death when Denise returned home and was sober. Mark was between the ages of 5 and 12.*

*Mark's impulse control and alcohol dependency has brought him in conflict with the law on numerous occasions. He has four convictions for theft under. All of the thefts involved shoplifting, most recently,*

*theft of an iPhone. He has one conviction for resist arrest and assault police and convictions for fail to appear and fail to comply. Early incidents were referred to Direct Accountability (diversion) which Mark was incapable of successfully completing as he failed to show up for appointments with the Community Justice Worker.*

*Ten months ago he was convicted of sexual assault. The incident involved a 15 year old girl. The facts of the sexual assault afford further evidence of Mark's inability to exercise sound judgment and control his impulses. Mark was walking through the park and saw a girl sitting on a park bench. She smiled at him when he walked past. He sat down next to her and they exchanged a few comments whereupon he reached over and kissed her and touched her breasts.*

*Mark was in pre-trial custody for a month prior to entering a plea to sexual assault. During that time, the observations of the staff were that his behaviour (agitation and combativeness) became increasingly difficult to manage.*

*There was a presentence report ordered and this information was included.*

*Carol had made it clear to Mark that if he got in trouble with the police again, as far as she is concerned he would no longer be welcome in her home. On his 20th birthday Carol told Mark it was time for him to leave. She gave him a small amount of money. Mark took a bus to Toronto to live with his mother, Denise, but ended up on the streets.*

*He has just been arrested in North Bay charged with robbery of a convenience store.*