

RE-INVENTING CRIMINAL JUSTICE:

THE SIXTH NATIONAL SYMPOSIUM

FINAL REPORT

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The Sixth National Criminal Justice Symposium
on
Public Confidence in the Criminal Justice System
“The Lynch Pin of Justice”

“Public confidence is the lifeblood
of the administration of criminal justice.”¹

On 17 and 18 January 2014, 83 members of the criminal justice system gathered in Ottawa for the sixth of a series of unique opportunities for police, defence counsel, prosecutors, judges, justices of the peace 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 members 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.

In response to a survey completed by participants at the 2013 symposium, the Ottawa meeting focused on a single theme with multiple dimensions –

¹ *R. v. Maxwell*, [2012] 1 L.R.C. 688 (U.K.S.C.), Lord Collins at para. 110.

public confidence in the criminal justice system (CJS). Discussion papers² prepared for and circulated prior to the Symposium, presentations by criminologists and media experts and the combined experience of the participants were used as a basis for discussing the current state of public confidence in the CJS, factors contributing to it, the challenges it presents to the system and practical ways to increase public confidence in the CJS. This report contains some references to the discussion papers, but primarily summarizes the discussions held during the plenary sessions of the Symposium.

1) Background

There is no denying the importance of public confidence in the CJS. The Supreme Court of Canada has repeatedly declared that public confidence in the administration of justice underlies constitutional rights at the very heart of the criminal process.³ Experience in Canada and elsewhere demonstrates that when the public loses confidence in its CJS, compliance

² Anthony N. Doob, “*Understanding Public Confidence in the Criminal Justice System: A Compendium of Research Findings from Criminological Highlights*”; Charlotte Fraser, “*Public Confidence in the Canadian Criminal Justice System: A review of the evidence*”; Karen Hudson, Q.C., “*Legal Aid and Public Confidence in the Criminal Justice System: a Rolling Stones’ Perspective*”; and John Pearson, “*Setting the Context*”.

³ *Wood v. Schaeffer* 2013 S.C.C. 71 (independent and impartial investigation of allegations of serious police misconduct is important to public confidence in the justice system); *R. v. N.S.* 2012 SCC 72; [2012] 3 SCR 726 (the right to a fair trial is crucial to the presumption of innocence and the maintaining of public confidence in the criminal justice system); *R. v. Ipeelee* 2012 SCC 13; [2012] 1 SCR 4 (publicly communicating correctional policies and programs is important so the public “can be satisfied that the offender deserved the punishment he received and feels a confidence in the fairness and rationality of the system”); and *R. v. Davey* 2012 SCC 75; [2012] 3 SCR 828 (seeking information regarding prospective jurors from members of police services threatens public confidence in jury selection and the administration of the criminal justice system).

with and support for the law suffers. If the public or a marginalized community within the broader community lacks confidence in the ability of the justice system to protect it from crime, uphold individual rights and freedoms and fairly apply the rule of law, victims will not turn to the CJS for redress, witnesses will not come forward to assist in the apprehension and prosecution of the guilty and the legitimacy of and respect for courts will diminish in the eyes of the public.

Having regard to the importance of public confidence, it is unfortunate there remains a lack of “hard evidence” on which to arrive at an objective assessment of the level of public confidence in the CJS. Dire warnings are frequently sounded about a “crisis of public confidence”; and changes are regularly made to the CJS on the basis that they are needed to restore, maintain or bolster public confidence. But how is it determined that the changes are truly necessary to sustain or enhance public confidence in the system? Having regard to the absence of baseline data, how is it determined when changes are made that they have achieved their objective? In the absence of hard evidence, there is always a danger changes will be made and success or failure proclaimed on the basis of anecdotal or biased information.

2) The Current State of Public Confidence in the CJS

Accurately assessing levels of public confidence in public service delivery systems (e.g. education, health care and justice) is not a simple task. Some would argue it is an impossible one. Criminologists have traditionally focused their research on participants directly affected by the justice system (e.g. accused, victim/complainants, witnesses, and jurors) or those

involved in the operation of and decision making in the system (e.g. police, prosecutors, defence lawyers, judges, victim services workers, correctional workers and policy makers). The goal of the research has been to determine why people engage in crime, the nature and operation of the criminal process and the objectives and outcomes of the process.⁴ It is only relatively recently that the role played by and power of the public in the CJS has attracted the sustained interest of academics and government.

If you want to improve public confidence in the CJS, you need to be able to measure public confidence in it. Measuring and monitoring public confidence in the CJS are now priorities in many countries, including Canada.⁵ Governments are increasingly relying on such measures to assess and promote their performance. But the research is plagued by a lack of consistency⁶ and replete with methodological challenges: who is “the public”; what does “confidence” mean, does a “crisis” in the system produce temporary, misleading results; and is sufficient data available for the public to make informed responses to survey questions?⁷

⁴ Kimberly N. Varma and Voula Marinos “Three Decades of Public Attitudes Research on Crime and Punishment in Canada” Vol. 55, No. 4, *Canadian Journal of Criminology and Criminal Justice*, 549 at 550.

⁵ Charlotte Fraser, *Public Confidence in the Canadian Criminal Justice System: A review of the evidence*, Paper prepared for and distributed at the 6th Annual Reinventing Criminal Justice Symposium, Ottawa, January, 2014.

⁶ J.V. Roberts, “*Public Confidence in Criminal Justice: A Review of Recent Trends*”, *Report for Public Safety and Emergency Preparedness Canada* (Ottawa: User Report 2004-05). Few Canadian surveys are regularly repeated. Periodic assessments of short-term and long-term changes in public perceptions would help agencies and researchers track change in public confidence. Assessing public opinion on multiple occasions could also reveal trends and assist in evaluating efforts to improve aspects of the CJS.

⁷ Anthony N. Doob, *Understanding Public Confidence in the Criminal Justice System: A compendium of research findings from Criminological Highlights* prepared for and distributed at the 6th Annual Reinventing Criminal Justice Symposium, Ottawa, January 2014.

Since the state of public confidence in the CJS is based on subjective considerations, it is affected by numerous drivers. Nonetheless, it has been measured in various ways and the measurement tools provide some useful baseline measures. But there are only a limited number of questions that can be asked and shortcomings are associated with each one. For example, the CJS means different things to different people, as does the very concept of justice itself.

The empirical evidence discloses some general trends:

- rates of public confidence in the CJS have remained relatively stable in Canada;
- less than half the Canadians surveyed have confidence in the CJS, but Canada has higher confidence in its CJS than other western jurisdictions have in their CJSs;
- there are wide variations of confidence in different aspects of the system (80% or more of people surveyed have high confidence in the police);
- between half and two thirds of the people surveyed are satisfied with the courts;
- less than half are content with the corrections system;
- public education about the CJS does not appear to have a long term effect on public confidence; and
- the youth criminal justice system is rated lower than the adult criminal justice system.

Canadians are confident in the ability of the system to deliver on certain parts of its mandate, but not on others. They believe the system:

- respects the rights of people suspected or accused of crime,
- treats people fairly,
- solves crimes,
- convicts the right individuals, and
- prevents offenders from escaping from custody.

Canadians have less confidence in other areas. The public has no confidence in the ability of the CJS to deal with matters in a timely way. Judicial sentencing practices are perceived to be too lenient. Canadians are sceptical of the ability of corrections to rehabilitate offenders and help them to become functioning citizens. They are concerned about the ability of corrections to release the right offenders at the right time. The public is also concerned about whether the CJS is doing enough to help victims of crime. Research shows that victims want increased information about how the CJS works in general and about their case in particular.

3) Public Confidence Challenges facing the CJS

The CJS faces numerous challenges when it comes to public confidence. They include:

- a lack of openness and transparency;
- an inability to complete criminal matters in a timely way;
- an inability to effectively communicate with the public;

- the responsibility of the CJS to deal with controversial substantive issues that affect public confidence;
- a lack of performance measures, with the result that the public has no way of knowing or discussing the expected goals of the justice system or assessing how well it is performing;
- a public perception that the system is not accountable and is organized for the convenience of those employed by it, rather than for those affected by it – accused, victims, witnesses and jurors;
- insufficient knowledge of and research into public confidence issues;
- a lack of public participation in key decision about the values, objectives and appropriate framework of the CJS; and
- insufficient access to justice on the part of the poor and victims.

a) Lack of Openness and Transparency

Our CJS has inherited statutory provisions, rules and traditions that make it a closed system operating in an increasingly open society. Those who turn to the system or are required to deal with it are often overwhelmed by it. They find it confusing and unfriendly. Many of those working in the CJS are uncomfortable with explaining how the system operates (e.g. “I cannot give you legal advice”) and discussing individual cases (e.g. “the case is before the courts and I cannot comment on it”).

The *Criminal Code* contains provisions restricting the public circulation of information (e.g. publication and bail hearing bans) that may no longer be needed or relevant, given social media. Until recently, it was considered improper or unseemly for lawyers to “argue cases in the media”.

Traditionally, the *sub judice* rule was interpreted as prohibiting any public comment on a case. Many judges still consider it injudicious to publicly speak about the system other than through their judgments. However, other judges see no problem in actively engaging with the media and the community as a way to increase public understanding of the justice system.

A challenge facing all jurisdictions in Canada is managing criminal cases to completion in a time that seems reasonable to the community. This issue has been recognized in every jurisdiction and various strategies are being implemented and evaluated.

b) Ineffective Communication

For the majority of the population, the media are the main source of information about the CJS. But the system makes few efforts to ensure that the media understand the issues under consideration, or have access to relevant documents, or even the timing of significant court events. Generally the approach of the CJS is to treat the media with suspicion and limit contact with them rather than trying to ensure that they have all of the information they need to provide complete and accurate information to the public about how the justice system functions. Members of the CJS are slowly becoming more accustomed to communicating with the media and the public. But they do not receive sufficient training on how to do it effectively. As a result, they often create confusion or contribute to misunderstanding. They also fail to recognize that there are different audiences requiring specific messages (e.g. victims, the media and the

broader public) and there should be different messaging at the community level reflecting the needs of the local community.

The value of effective CJS communication with the community is demonstrated by the difference in public response to the *Young Offenders' Act (YOA)* and the *Youth Criminal Justice Act (YCJA)*. The *Young Offenders Act (YOA)* led a short and troubled life. It was criticized by the public as being too lenient at the same time youth justice professionals were concerned about the overuse of youth custody. The *Youth Criminal Justice Act (YCJA)*⁸ came into effect in 2003 and brought about a huge drop in the use of youth court and custody. While public confidence in the youth justice system overall has not changed dramatically, the *YCJA* has not been subject to the same type of vehement and direct public attacks faced by the *YOA*.

Why has the *YCJA* succeeded in winning a measure of public acceptance where the *YOA* failed? One reason is the substantial period of lead time preceding the implementation of the *YCJA*. During this time significant public consultation took place. The *Act* also articulates understandable guiding principles and procedures. These principles include “proportionality”, which is defensible because it is neither “too lenient” nor “too tough” and “holding youth to account” – a principle that is “neutral”.

⁸ S.C. 2002, c.1, in force April 1, 2003.

While there have been attempts to provide more timely information to the public about the CJS (e.g. court web-sites), there remains a lack of coordinated, accessible, on-time information about criminal justice outcomes. The various components of the system do not provide the public with coordinated messaging. This can lead to incomplete and inaccurate media reporting. Public representatives (e.g. politicians) play a key role in informing the public about the CJS. If they express a lack of confidence in some or all of the system, it will directly affect public confidence. Particularly problematic is messaging that distorts or fails to reflect reality.

c) Difficult and Controversial Legal Issues

The CJS is required to independently and impartially deal with issues that have the potential to seriously damage public confidence. Case delay and backlog are extremely difficult for members of the public to understand. In a business environment, the court delay the public is subjected to or learns about from the media would be unacceptable. In a court setting, it is common place. Adjournments appear to be granted to lawyers with little or no accountability. When adjournments are granted, there appears to be no consideration of the impact multiple delays can have on victims and witnesses.

While it may not be foremost in the minds of the public, delay and backlog have also resulted in unacceptable pretrial detention rates (up to 60% in some provinces). In the eyes of the public there is no excuse for prosecutions stayed for delay. Cases dismissed because they cannot be

handled in a timely manner represent an egregious failure on the part of the CJS. It does not matter what component of the system is at fault, public confidence in the system as a whole suffers. A judicial stay entered because of delay prevents a case from being decided on its merits and denies the victim and the community justice.

Research suggests that there is a public perception that sentences do not reflect the gravity of the crime. But when the public is provided with context about the offender, there is usually greater understanding and acceptance of the reasoning of the sentencing judge. The public also perceives that the justice system is “soft” when offenders are released from custody on parole in advance of their sentence expiry date. Decisions made by prosecutors not to proceed with a case because of a lack of evidence or public interest considerations can also give rise to vocal public criticism if the reasons for the decision are not effectively explained (and fairness to the accused can preclude a full explanation). When the public learns only about the crime and not the accused, it is also difficult for them to appreciate the importance of the CJS responding to the individual circumstances of each accused.

d) Lack of Performance Measures

Performance measurement is considered an essential aspect of modern business practice. You cannot manage what you cannot measure. The failure of the CJS to develop meaningful performance measures suggests to observers that the system is not serious about managing itself effectively

and efficiently. The system is paid for by the taxpayer. More and more the taxpayer is insisting on receiving value for its tax dollar. The public can only evaluate the cost effectiveness of the system if there is a publicly available framework establishing the goals of the CJS and performance measures to assess if it is meeting them.

In 1993, the Government of Alberta publically announced a five year 20% budget cut on all ministries. As a result of strategies implemented in the Department of Justice, in particular a more restrained approach to prosecution and greater use of diversion, there was a 32% decrease in the provincial imprisonment rate between 1993 and 1997. Political messaging described this as a success because it showed that there are other ways to deal with less serious criminal activity than incarceration. It is better to have Albertans working than in jail. Lemons (i.e. a budget cut) were used to make lemonade (good public policy). While there was push-back from some parts of the public, this coherent, defensible and transparent change in justice policy was tied to a concrete performance measure that allowed the public to assess the success of the policy change.

e) Public Perception

It often appears to the public that the CJS is organized for the convenience and benefit of those who work in the system rather than those who are forced to come to the system or turn to it for help. The CJS remains traditional, formal and “old fashioned” in many ways. Its fundamental characteristics have not changed from the 19th century. Video technology is

slowly being embraced, but the system remains primarily paper based while the rest of the world has become electronic and digital.

To many members of the public, the CJS appears unaccountable because of the independence conferred on its constituent parts. Despite courts of appeal, judicial councils, oversight bodies, and discipline committees; police, lawyers and judges are often seen by the public as privileged decision makers with sweeping powers who do not have to explain their decisions. When confronted with outside criticism, they close ranks and judge one another.

Courthouses are not designed for the members of the public that infrequently go to court. Often, there is not effective signage. This can lead to confusion and frustration. In many courtrooms, clerks and other court staff appear unfriendly by failing to politely remind the public about court etiquette.

The public often has unrealistic expectations about what outcomes the CJS can deliver. The public does not understand that there are limitations on what the CJS can do without assistance from other social agencies (e.g. welfare, health and housing). And victims yearn for closure they do not receive. Each time they come back to court they have to relive a harrowing experience. Moreover, they do not comprehend the rationale for what they see as the laborious procedures and complicated rules governing legal

proceedings. Witnesses are perplexed when they find themselves cut off from what they consider important information while testifying. Judges and lawyers are not always patient with lay people in court.

The system is not generally prepared to re-examine its processes to see if they could be made more responsive to the needs of participants. There is a tendency to justify practices on the basis of existing rules without asking whether there is a way of achieving the goals in a manner that is more satisfying to the participants in the court process. The CJS also tends to treat all cases in the same way. Except where the accused is in custody, cases that should receive priority are subject to the same delay as less urgent cases. Triage is a common practice in hospitals; it ensures that the most urgent cases are dealt with first. Similar approaches are seldom used in the CJS.

f) Insufficient Access to Justice

There is a lack of legal aid available in the CJS to assist those involved in the system who do not have the resources to pay for their own defence. This undermines fairness, a concept embraced by Canadians as fundamental. Inadequate legal aid also makes the CJS more inefficient (e.g. adds to delays) and increased inefficiency erodes public confidence. The unfairness and inefficiencies are felt most keenly by marginalized communities, cultural minorities and new Canadians. They often see themselves navigating a system which is alien and unfriendly. Those

working in the system do not place sufficient emphasis on simplifying the process for those involved in the system.

1) Potential Solutions

Ten major solutions to the lack of public confidence in the CJS were proposed at the Symposium:

- ensure meaningful public inclusion in key decisions about the vision, values and goals of the CJS;
- open up the system/transparency;
- increase collaboration within the system and with other public service systems;
- create a framework and meaningful performance measures on which to evaluate the system;
- enhance public perception of the system;
- improve management of substantive issues that negatively affect public confidence;
- establish better communication;
- increase knowledge about and research on public confidence;
- avoid risk aversion because of a perceived lack of public confidence; and
- increase access to justice for the poor and victims of crime.

a) Increased and Meaningful Public Inclusion

The CJS, including those responsible for developing criminal justice policy, should include the public in defining the vision, values and objectives of the system. The public should also play a role in designing the framework used to evaluate the performance of the CJS. To increase public input, the CJS has to find new ways to energize and engage communities, especially excluded and marginalized communities. This could be done by judicial outreach where judges (or judicial spokespersons) participate in community meetings and radio and television broadcasts.

b) Open up the system by Increasing Transparency

There was broad agreement at the Symposium that the CJS has to rethink its traditional barriers to transparency. This will require identifying barriers to an open system and changing policies and standards to support openness. It is important that the public have access to information about the things they most want to know, particularly at the community level.

There is a constitutional presumption in favour of open justice in Canada and it should be reflected in the principles governing the system and the practices of those who work in it. This will require review of the continued utility of statutory provisions prohibiting the publication of evidence (e.g. publication and bail hearing bans). It will also require the system to address its cultural and attitudinal barriers to sharing information. The entrenched traditions of the legal community restricting public access to the system and shrouding it in “professional mystery” have to be critically revisited. The

CJS should admit its failures, explain them and demonstrate that it has learned from them. This will require acknowledging the limitations on what it can do and the importance of other systems in dealing with the problems that bring people before the criminal courts (e.g. mental health problems, housing, and marginalization).

New technology can play an essential role in opening up the system. It can assist in the timely release of judgments to the media and the public. This will permit the CJS to establish a presence and a cognitive leadership role with respect to criminal justice. Public education using multiple communication methods (e.g. visual media) can also play a role in explaining the system to the public. At times of particular importance, customized communication measures should be used (e.g. the “conciierge” concept). It is important that information is communicated to individuals when they need it.

c) Increase Collaboration within the CJS and with other Systems

Collaboration amongst independent actors in an interdependent system results from the identification and implementation of shared goals and values. It leads to common messaging and mutual support. Not only do the component elements of the CJS have to collaborate, the CJS has to collaborate with other systems to address the causes of crime and the needs of those who appear before the courts.

The various components of the CJS can assume joint collaborative leadership by engaging the community together in town hall meetings and justice summits. Joint media conferences demonstrate that the CJS is a system with shared values and goals. This can also be demonstrated by integrated messaging that is mutually supportive.

d) Performance Measures

The CJS should embark on a collaborative exercise to identify system goals and appropriate indices of performance, adjusted for different parts of the system and different communities. This will require identifying the performance measures that should be measured (e.g. number of appearances, time delay between first appearance and final resolution, number of accused and whether unrepresented, outcomes, rates of imprisonment, recidivism). It is unlikely that there will be instant unanimity about “appropriate measure”; discussion and compromise will be required.

The public should have a voice in determining what will be measured and reported on. Once the goals and indices of performance are agreed upon, there should be collaborative cross system commitment to meet them. This should include peer review and mentoring as a component of evaluating performance. To increase public confidence, the results of performance audits should be made publicly available.

e) Address Public Perception Problems

One of the most important and difficult transformations required by the CJS is to change its focus or lens from the providers of services to the users of the system. This will require that users of the system (e.g. witnesses, victims, accused, jurors) receive respectful treatment from everyone working in the system. Every participant in the system must acknowledge responsibility to help court users not only navigate the system effectively and easily, but also to change time-honoured ways of managing the CJS to focus on what is truly important to the determination of criminal charges.

Public legal education initiatives and information at the courthouse should be encouraged. They should be developed to provide the public with what it needs to know when it needs to know it. These educational opportunities must be developed with special audiences in mind (e.g. First Nations people, new Canadians and victims). Innovative ways should be developed to deal with the sense of alienation and discomfort the public feels when it enters the strange environment of a courthouse. For example, Walmart uses greeters to welcome and orientate its customers and civilian volunteers play a similar role in hospitals.

Information technology provides innovative ways to serve the public. As it evolves, technology will be able to provide users of the CJS with improved service. New technology will allow the visualization and eventual realization of an electronic criminal justice process. It will also permit future courthouses to be designed with the needs and convenience of courthouse

users taken into consideration. The goal is for the CJS to be and to be seen as responsive, differential in its response to different situations and capable of providing a triage approach. These responses will not only be court based; they will be available pretrial and involve the police, other social agencies and different ways of responding to problems that are currently dealt with by courts.

f) More effective Management of Substantive Issues that negatively affect Public Confidence

Delay is the single most problematic issue contributing to a lack of public confidence in the CJS. It is a long standing problem and has resisted concerted corrective efforts. Experience has shown that the most effective ways to address delay are 1) changing local legal culture, 2) involving all components of the system under effective leadership, and 3) a case management system that enjoys the support and reflects the needs of the users of the system.

The CJS should engage the public throughout the criminal process and not only at its conclusion. For example, the frustration felt by participants and the public due to delay should be addressed when it arises. Moreover, wherever possible, accused, victims and witnesses should receive advance notice that the case is not proceeding on a scheduled date. Other issues that give rise to public concern, particularly when they are highlighted by the media, are the high rate of pretrial custody and the unfairness created by a lack of access to legal aid.

g) More Effective Communication

The CJS has to bring a special focus to communicating with those most directly affected by the system, without forgetting other audiences (e.g. the media and the public as a whole). This will require abandoning “legalese” and adopting plain language. It will also require the development of innovative forms of easily understood communication. Training justice system personnel on how to inform media and the public will improve the accuracy of information and make it more understandable. Certain groups require special communication attention because their interests and aspirations do not always coincide with those of the majority.

In explaining the system, the CJS must recognize that it has to cover all components of the justice system. The public should also be provided with understandable and accessible data. While there are confidentiality considerations that impose limits on what can be communicated, the data that can be made public should be “open data” so it can be used and analyzed from different perspectives.⁹ When information cannot be made available in advance, it should be provided as soon as possible through “media lock ups” and briefings. The feasibility of webcasts and practices adopted by some courts (e.g. courts of appeal and the Supreme Court) should be considered by other courts.

⁹ Open data can be defined as data that is available as a whole and at no more than a reasonable reproduction cost, preferably by downloading over the internet. The data must be available in a convenient and modifiable form, provided under terms that permit reuse and redistribution – including the intermixing with other datasets, and everyone must be able to use, reuse and redistribute the data. There also should be no discrimination against fields of endeavour against person or groups (*The Open Data Handbook* (opendatahandbook.org/en/what-is-open-data/)).

The CJS should deliver positive messages when possible. Patronizing messages should be avoided. The messaging must involve real dialogue. The CJS should “celebrate” its champions (e.g. who have had a long history of public service or have introduced new, innovative procedures). As much as possible, the system should attempt to reduce the “politicization” of justice issues. The establishment of local justice media committees should be considered to increase collaborative messaging. Modern technology (e.g. live feeds and webcasts) can be used to provide real time information.

The CJS needs to make use of modern communication tools, including social media. And it has to keep up with the rapidly evolving world of communications. Technology is now generally available capable of thwarting efforts to keep courthouses and courtrooms camera free. Perhaps the system should recognize there is no point in insisting on unenforceable rules contributing to a public perception that the CJS is a closed system.

h) Gather more Information and Research on Issues of Public Confidence

There is a lack of knowledge about and research into public confidence in the CJS. The utility of existing data is also uncertain. The question that has to be asked is: what affects and improves public confidence? More comprehensive research and data will lead to improved policy formulation

and decision making across the CJS. It will establish baseline data and provide a foundation on which to identify priorities.

The methods used to gather and communicate data need to be improved. At present it is gathered by jurisdictions in isolation and cannot be easily shared with other jurisdictions. The evaluation of new initiatives should include a plan to measure the effect of the initiative on public confidence. The CJS would also benefit from increased use of exit interviews and user surveys.

i) Decrease Risk Aversion

A perceived lack of public confidence can produce risk aversion on the part of CJS decision makers who do not want to be publicly criticized for an unpopular outcome in a case. This “chill” can lead to decision makers avoiding or improperly exercising their discretion. The exercise of discretion lies at the heart of the CJS and police and prosecutors should be prepared to explain in appropriate language why they exercised their discretion the way they did. But it should also be made clear to them that if they properly exercised their discretion, they will receive full management support regardless of the degree of public criticism arising from the decision.

j) Improve Access to Justice

Most Canadians are proud of the *Charter of Rights and Freedoms*, even if they are not always happy with the case specific outcomes it dictates. They

also recognize the value of a fair and accessible court system. Inadequate legal aid and counsel unable to provide appropriate legal services because of a lack of resources on the part of their client constitute practical barriers to justice.

First Nations people in particular face these barriers. The leadership of the CJS needs to lead the discussion about the importance of legal aid so that the link between public confidence in the system and legal aid is better understood. This includes discussion about the need to review and expand eligibility for legal aid. The importance of “equality of arms” between the prosecution and defence has to be emphasized by those in the system. Legal aid should be invited to the table when criminal justice issues are discussed to broaden the discussion about public confidence in the CJS and how best to achieve it.

The CJS should provide appropriate services to victims. These services should be seen as more than “advocates” for victims. The primary role for victims’ services is to inform and educate victims about the system and the specific case of interest to them. This support must start immediately after the crime of concern to the victim has been committed; continue while the case is in the CJS and only end when the case leaves the court process or the convicted offender leaves the correctional process.

The CJS should assist victims in forming realistic expectations about what will happen in the case of interest to them. This may include mediation or reconciliation. The system should also assist them in understanding that it cannot help them heal, but can help them find resources an appropriate healing process. All information provided to victims must be accurate, appropriate to the case, and timely. Experience has shown that the services and information required by victims are best provided by dedicated victim services programmes. Training in and oversight of these programme services is critical. The programmes should be considered a core function of the system.

2) Specific Recommendations

Recommendation #1

As a participant at the Symposium observed “the enemy of public confidence in the system is those in it who have closed minds”. The Symposium recommends the following statement of principles for the CJS.

A more transparent and accessible CJS would contribute to increased understanding and respect for the system, its participants and stakeholders. By embracing an approach focused on the users of justice services rather than the providers of justice services, the CJS will contribute to increased public confidence in the system. The CJS has to acknowledge its limitations, including limited resources and expertise restricted to criminal justice issues and not societal problems broadly defined.

To achieve the goal of enhanced public confidence, the Symposium recommends changing the focus or lens of the CJS to the users of the

system. This will require modernizing the vision, values, objectives and framework of the CJS. Federal, provincial and territorial ministers responsible for justice should engage in a comprehensive and inclusive process to determine the modern vision, values and objectives of the CJS.¹⁰ The process should also develop an evaluative framework to determine whether the system is meeting its objectives. All components of the CJS and the public should be involved in the process. To increase input from the public, the CJS has to find new ways to energize and engage communities, especially excluded and marginalized communities. This could include outreach by the judiciary and the legal community and involve community meetings and radio and television broadcasts.

Recommendation #2

The Symposium recommends opening up the CJS and increasing its transparency. National stakeholders groups, such as the Canadian Bar Association, The National Action Committee on Access to Justice and The Steering Committee on Justice Efficiencies and Access to Justice may wish to study this issue and report their advice to policy makers.

¹⁰ The Government of Canada prepared and released *The Criminal Law in Canadian Society* (Ottawa August 1982, J2-38/1982E) in 1982 and in 1990 released *A Framework for reform of sentencing, corrections and conditional release*. These documents encouraged public discussion about the purposes and principles of the criminal law and identified some of the basic assumptions that had governed CJS policy development for decades.

Recommendation #3

Intra and inter system collaboration should be increased in the CJS. Senior leaders in government and the CJS should explore practical ways to improve collaboration within the CJS and between the CJS and other public service systems.

Recommendation #4

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

Recommendation # 5

A goal of the CJS should be to increase knowledge of and research into public confidence in the System. The question that has to be asked is: what

affects and improves public confidence? More comprehensive research and data will lead to improved policy formulation and decision making across the CJS. It will also establish baseline data and provide a foundation on which to identify priorities.

Recommendation #6

The CJS must actively listen to the public. Senior leaders in the CJS should encourage all participants in the system to listen to the public about ways the system can be improved. This listening should be to understand and not to defend. This will require acknowledging the limitations on what the CJS can do and the importance of other systems in dealing with the problems that bring people before the criminal courts (e.g. mental health problems, housing, and marginalization).

Recommendation #7

The CJS needs to effectively address substantive issues critical to public confidence. Priority must be placed on addressing issues that have a direct and negative affect on public confidence in the CJS. Court congestion and delay is the single most problematic issue contributing to a lack of public confidence in the CJS. The system should provide the public with digestible information on what it is doing to address the issue. The public should be engaged throughout the criminal process and not only at its conclusion. Where possible, the frustration felt by participants and the public due to delay should be addressed when it arises.

Recommendation #8

All components of the CJS need to develop better ways of communicating with each other and the public. The CJS has to bring a special focus to communicating with those most directly affected by the system, without forgetting other audiences (e.g. the media and the public as a whole). This will require abandoning “legalese” and adopting plain language. It will also require the development of innovative forms of easily understood communication. Certain groups (e.g. marginalized and First Nations communities and new Canadians) require special communication attention because their interests do not always coincide with the interests of the majority.

Recommendation #9

Whenever possible, accused, victims and witnesses should receive advance notice that the case of interest to them is not proceeding on a scheduled court date. All participants in the CJS, irrespective of their role, should commit to achieving this goal.

Recommendation #10

The CJS must avoid decision making “chill” because of a concern on the part of decision makers about a lack of public confidence and the adverse consequences of making an unpopular decision.

Recommendation #11

There is a crucial need for an increase in access to justice for the poor. The Steering Committee on Justice Efficiency and Access to Justice should study and report to deputy ministers of justice on ways to increase access to justice. The leadership of the CJS needs to lead the discussion about the importance of legal aid so the link between public confidence in the system and legal aid is better understood. The need to review and expand eligibility for legal aid requires the support of CJS leaders. Legal aid should be invited to the table when criminal justice issues are discussed to broaden the discussion about public confidence in the CJS and how best to achieve it.

Recommendation #12

It is critical to public confidence in the CJS that victims of crime receive access to justice through appropriate victims' services. The primary role of victims' services is to inform and educate victims about the CJS and the specific case of interest to them. This support must start immediately after the crime of concern to the victim has been committed and continue when the victim enters the CJS. It should only end when the case of interest to the victim leaves the court process or the convicted offender leaves the correctional process. Experience has shown that the services and information required by victims are best provided by dedicated victim services programmes. The CJS should assist victims in forming realistic expectations about what will happen in the case of interest to them.

3) Conclusion

The CJS cannot assume that it “has it right” and lack of public confidence is the result of the public not understanding the difficulties and complexities inherent in the CJS. The system exists to serve the public and the public pays for it. While this does not mean the system must give the public what it wants in the way of outcomes, it does mean the participants in the CJS need to understand and reflect on what the public wants from it as a public service. This is best done by engaging the community. New approaches to engaging the public need to be reflected in actions and not just words

There is no “silver bullet” available to immediately increase public confidence in the CJS. Multiple approaches will be required. Small “teachable moments” can arise in ordinary events and be used to increase public understanding. Most importantly, the CJS must show it deserves public respect. It will do this if it treats the public with respect. Respect is what you give to get.