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EKOS Research Associates Inc.

National Justice Survey 2017: Issues in Canada's Criminal Justice System

Executive Summary

Prepared for:

The Department of Justice

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EXECUTIVE SUMMARY

The Department of Justice supports the Minister of Justice and the Attorney General of Canada through administering federal law, developing policies, and providing legal support to government departments and agencies. To inform policy development, public engagement and communications, and to support its mandate, the Department of Justice commissions periodic national surveys to explore Canadians' perceptions, understanding, and priorities on justice-related issues.

This 2017 survey focuses on views and perceptions of the criminal justice system (CJS), in order to inform the ongoing criminal justice system review being undertaken by the Minister of Justice. It seeks to engage with people in all regions of Canada and to promote government transparency and openness. Specifically, the study explores Canadians' views and perceptions of:

- Sentencing (e.g., judicial discretion, sentencing considerations, guidelines)
- Mandatory minimum penalties (MMPs)
- Administration of justice offences (AOJOs)
- Use of diversion/alternative measures
- Restorative justice and problem-solving approaches to justice
- Performance measurement and confidence in the CJS

The study is composed of three components: two national online surveys, and a series of focus groups and telephone interviews.

The **first** national, online survey included just over 2,000 Canadians randomly sampled from EKOS' in-house panel (Probit¹). For the first survey (known as an *informed* survey), questions were accompanied by information and detailed scenarios to provide context for responses. Three scenarios were presented, each depicting an offence for which an MMP would apply, a few details on the offender (e.g., personal circumstances, level of responsibility taken, whether remorseful) and the crime. The offences depicted were sexual assault involving a minor, recklessly discharging a firearm, and trafficking in opioids while carrying a weapon. The focus was on sentencing, discretion and mandatory minimum penalties. Because of the additional materials provided, it took an average of 31 minutes to complete the survey.

¹ Probit offers complete coverage of the Canadian population (i.e., Internet, phone, cell phone), random recruitment (i.e., all respondents to our panel are recruited by telephone using RDD and are confirmed by live interviewers – they do not opt themselves into our panel), and equal probability sampling (which means that results are generalizable to the broader population).

In addition, a parallel sample of almost 3,500 individuals was recruited using an open link circulated by Justice Canada and featured on their website. This survey was undertaken to provide an opportunity for open consultation on sentencing and captured the views of more invested Canadians as well as professionals working in criminal justice issues. The results are not generalizable to the broader population, and thus are not a focus of this report.

The **second** national, online survey included just over 2,000 Canadians randomly sampled from EKOS' in-house panel (Probit). This survey was shorter, no scenarios were provided, and many questions did not require the same degree of information/explanation required for questions in the first survey. This survey focused on administration of justice offences (AOJO), restorative justice and problem-solving justice approaches; completion time was shorter, at 18 minutes.

The third component included a series of 12 in-person focus groups and 20 telephone interviews that were conducted to explore selected issues areas in greater depth. Two English focus groups were held in each of Halifax, Toronto, Vancouver, and Edmonton, in addition to one in each of Ottawa and in Winnipeg. Two groups were also held in French in Montréal. Interviews were conducted by telephone with residents of more rural and remote communities. Topics explored included sentencing, MMPs, administration of justice offences, restorative justice and problem-solving approaches to justice, and performance measurement in the CJS.

Key Findings

Because there was overlap in the topics covered across all three components of the study, findings have been integrated into topic areas and are summarized below.

Diversion

Diversion was described to participants of the first survey as providing a way of holding accused people accountable through means other than a trial while still protecting society. Options for diversion can include community service, mediation, referrals to specialized programs for counselling, treatment or education, (for example, life skills, drug or alcohol treatment, anger management), referrals to community or aboriginal committees, victim-offender reconciliation programs and similar measures aimed at restorative justice.

Canadians support the use of diversion or other alternatives to the traditional justice process in the criminal justice system. The first survey revealed that eight in ten respondents believe that dealing with offenders outside of a court process and focusing on alternative measures would make the criminal justice system more efficient. Similarly, seven in ten believe that diversion would make the criminal justice system more effective. Most who support diversion suggest that it speeds up the court process, while some feel it helps to rehabilitate offenders. Of the minority not supporting diversion, many express concerns about the

potential for abusing the system, or feel that diversion is generally not likely an effective deterrent and may not have a significant enough impact on reducing reoffending.

Respondents of the first survey, along with participants of the focus groups and interviews, were presented with case scenarios and asked to indicate if the case should be diverted rather than prosecuted. At least half of respondents across all scenarios think that the offenders should be diverted rather than face prosecution (the scenarios depicted sexual assault involving a minor, recklessly discharging a firearm, and trafficking in opioids while carrying a weapon).

Canadians are most supportive of diversion for nonviolent offences in general (4 in 10) and for *first-time* non-violent offenders (3 in 10). Only 1 in 10 think that diversion should be the preferred response for all accused and just under 1 in 10 think it should never be an option. Focus group participants support diversion for cases involving offenders with a cognitive or mental disability, as well as in cases where jail is perceived to do more harm than good.

Problem-Solving Approaches to Justice

Problem-solving justice is an approach aimed at addressing the root causes of crime and conflict. It holds offenders accountable through monitoring participation in community-based programs (e.g., drug treatment, mental health treatment), and tracking progress towards rehabilitation goals. Once informed about the nature of problem-solving approaches to justice, Canadians are largely supportive of this type of approach according to this study. For example, almost six in ten of those in the first survey said that use of this type of approach in Canada should be further promoted. Fewer than one in ten said that they do not see it as an appropriate approach to crime (the remainder were of a moderate view on whether it should be promoted). Many focus group and interview participants, when asked about the use of problem solving **courts** specifically², cautioned that any expansion would need to come with additional investment in support programs used by the courts. They believed that to be effective, program resources would need to be well coordinated, integrated, and dedicated to supporting rehabilitation efforts within the criminal justice system.

Support for problem-solving justice is high – 88 per cent of Canadians express at least moderate support for promoting initiatives such as drug and mental health courts or specific courts that provide support for Indigenous offenders. Six in ten (60 per cent) Canadians agree that such approaches can adequately hold people to account for their crime. When respondents were asked to compare problem-solving justice to traditional approaches, 75 per cent of Canadians express high (39 per cent) or moderate (36 per cent) support for the idea that problem-solving justice could reduce rates of re-offending compared with traditional methods of justice. Most focus group and interview participants feel that an integrated approach such as problem solving courts has the potential to help reduce rates of reoffending.

² The focus group respondents talked about problem-solving courts, but second survey respondents talked about problem-solving approaches.

Generally, most focus group and interview participants expressed considerable support for this type of rehabilitative focus, helping vulnerable or marginalized offenders to obtain assistance to address these issues. They noted that offenders with mental health issues, addiction issues, or even those who are unemployed, can become caught in the system, and, as articulated by one focus group participant, “some offenders are more in need of help than punishment.”

Many in the focus groups and interviews viewed problem-solving justice as a process that would be of particular benefit to first time offenders, although some argued for even greater need among repeat offenders, where root causes had never been addressed. Some people expressed concerns about the availability of high calibre and effective programs in all communities, as well as the likelihood that this type of approach would not have any significant impact on some repeat offenders, if the offenders are not open to change.

Restorative Justice

Restorative justice (RJ) is an alternative dispute resolution practice that seeks to repair the harm caused by crime. In some instances, RJ programs provide supportive and safe opportunities for communication between those who are affected by an offence (victims, offenders, and/or community members), in situations where an offender has accepted responsibility for the offence and both the victim and the offender voluntarily agree to participate. This study indicates that Canadians are not very familiar with restorative justice. Among survey respondents, half rated themselves as having a low level of familiarity with this type of process. Only one in seven said they are familiar with it. This was similarly reflected in focus group discussions and interviews, where many participants posed questions about the process and outcomes or “success rates”. Following some explanation and discussion, however, most participants said they believe that restorative justice has the potential to be an effective way to repair harm caused by crime.

According to survey results, nearly nine in ten Canadians see the value in victims meeting with their offenders to relate the impact of the crime, should they wish to do so. Further, almost two in three survey respondents say they believe restorative justice could result in a more satisfying and meaningful process for victims than the mainstream justice process. Focus group and interview participants speculated that the process could help victims to gain information, understanding, and closure, fulfilling the need to “feel heard”. Canadians are correspondingly positive about the potential of restorative justice to improve the healing process of victims and families. Half of survey respondents said it would likely have a positive impact on healing, and another 35 per cent felt there would be a moderate likelihood of having a positive impact as moderate. Some focus group and interview participants argued that victim engagement may help victims feel less disenfranchised or harmed than the traditional court process. In fact, some focus group participants argued that violent crime may be the best use for the process, since it has the potential to help repair the emotional damage from “harsher” crime.

Canadians are positive about the impact of restorative justice on offenders' opportunity to demonstrate accountability for their actions, with 45 per cent believing this to be likely and another 35 per cent saying it would be moderately likely. Fifteen per cent feel it is an unlikely result. Most focus group and interview participants, however, feel that restorative justice would help offenders to understand the impact of their crime and enable them to put "a face" to the victim of crime. Some participants said that offenders may be able to address some root causes of their offence (such as alcohol or anger issues) that might not be addressed through incarceration. A few participants, however, expressed concern for offenders manipulating the process, trying to obtain a lighter sentence, or the process generally having no impact on repeat offenders.

According to survey results, almost two thirds of Canadians believe that restorative justice could be applied in all types of cases, provided participation is voluntary on all sides. Focus group and interview participants are also divided about whether restorative justice would be appropriate or effective for repeat offenders. Others, however, argue that habitual offenders may have the most to gain from restorative justice. The voluntary element is seen as critically important among focus group and interview participants to guard against any situation where the victim may feel threatened or uncomfortable in the process. Similarly, a process that allows for flexibility to implement appropriate conditions, based on the circumstance of the case was also regarded as a key factor in success.

Sentencing

Considerations

Canadians do not perceive their own knowledge of the criminal justice system to be very high. Results from the first survey reveal that four in ten Canadians feel moderately knowledgeable about how criminal courts in Canada sentence people. One in three state they have higher than moderate knowledge and one in four have limited knowledge.

In general, Canadians feel their knowledge of criminal sentencing is limited. Still, they have opinions about sentencing. For example, they do not believe that it is fair and appropriate to give all offenders convicted of the same offence the same sentence. The first survey found that almost all respondents (95 per cent) believe that the seriousness of an offence should be an important consideration for judges when it comes to sentencing decisions. Nearly three in four feel that how blameworthy or responsible the offender is, taking into account their personal circumstances should be a consideration in sentences. Focus group and interview participants further articulated that sentencing should consider the seriousness of the crime and level of harm done.

Discretion in Sentencing

The overwhelming majority of Canadians support judges having some degree of flexibility in determining sentences. Seven in ten support the flexibility of judges to decide on sentences themselves, but within a set of predetermined guidelines. A further one-quarter support an approach in which judges may decide

sentences entirely at their own discretion. Survey results reveal little support for sentencing without judicial discretion, with just four per cent saying that judges should give everyone convicted of the same offence the same sentence.

Focus group and interview results show preference among participants for judges to have the flexibility to make decisions on sentences based on the individual cases as judges are seen as understanding the specifics of the cases, have the legal background to make the best decision, and are aware of the precedents of other cases.

In focus groups and interviews, respondents indicate that key considerations of sentencing are the seriousness of the crime and level of harm done. The context of the crime and the offenders' intent to do harm (e.g., spontaneous or planned, presence and degree of provocation), as well as the degree of responsibility taken or remorse shown were other factors also mentioned by participants.

Sentencing Guidelines

Respondents were told that surveys show that many Canadians and some judges believe that sentencing is not consistent. Sentences for the same offence can differ from one case to the next. Respondents were told that use of sentencing guidelines could help sentencing to be more consistent by providing a range of sentences for each offence. This would enable judges to choose within a range based on how each offence happened and why and how the offender did it. It was further explained that, in unusual cases, a judge could go outside these choices, and provide their reasons for doing so. Many countries have guidelines within their courts to follow at sentencing, including the United Kingdom and the United States, however no such guidelines exist in Canadian courts.

Canadians strongly believe that sentencing guidelines would be effective. Over eight in ten respondents in the first survey believe that guidelines for sentencing would make sentences more consistent. Survey results highlight interest in support for introducing sentencing guidelines in for Canada. Most (eight in ten) believe that such guidelines should be considered, compared to just one in ten who are opposed to them. Focus group and interview participants likewise support sentencing guidelines or suggested ranges to help judges maintain consistency. While many participants support sentencing ranges, those opposed to them said they see this as another form of a mandatory minimum sentence. Similarly, some suggested that judges would have the latest information on similar crimes in order to make sentencing decisions, and know what works best in different scenarios. A few participants said that written rationales for lighter sentences or some checks and balances should be considered, including a review process involving multiple judges.

Sentencing commissions

A number of countries including Australia, the United Kingdom, and the United States have an independent organization comprised of judges, criminal justice professionals, crime victims' advocates, and academics which undertake one or more of the following activities: give courts/judges guidelines to follow when they decide on sentencing, recommend ideas to reform sentencing to the government, conduct research to develop more effective sentencing practices, and/or give information to crime victims and the public about

sentencing practices and research. These independent organizations are referred to as sentencing commissions.

Seven in ten Canadians believe that an independent organization such as a sentencing commission should be considered for Canada. The first survey highlights public confidence in sentencing commissions. Three in four Canadians believe that these commissions would improve sentencing consistency and seven in ten believe that such an independent organization should be considered in Canada. Various aspects of a sentencing commission were deemed important; three-quarters said that giving courts and judges sentencing guidelines would be among the most important aspects. Over half feel that researching effective sentencing practices, recommending sentencing reforms to the federal government, or giving information to crime victims and the public about sentencing practices and research are important aspects.

Mandatory Minimum Penalties (MMPs)

Participants were told that a mandatory minimum sentence is a jail sentence where the minimum length of time for a conviction of a specific crime has been set by Parliament, and a judge may not go below the minimum sentence although they are able to give more than the minimum sentence when it is appropriate. For offences that carry mandatory minimum sentences, judges have no flexibility to sentence someone below the mandatory minimum. In Canada, there are 72 offences in the *Criminal Code* and the *Controlled Drugs and Substances Act* that carry a mandatory minimum penalty (MMP), including the offences noted in the scenarios presented. Overall, Canadians feel they have limited knowledge about MMPs. Half gave themselves a low rating and just over one in four believe their knowledge to be moderate.

Attitudes

The first survey results show only limited support for MMPs that apply indiscriminately to all offenders convicted of the same offence. Only one in six Canadians believe that such an approach leads to fair and appropriate sentences, compared to more than three in four who do not. Three scenarios that depicted offences with MMPs that could come before the court were provided, describing different charges, and levels of responsibility and personal circumstances. In the focus groups and interviews, most provide reasons for not supporting the idea of mandatory minimum penalties.

Among the majority believing MMPs to be unfair, most argued that one size does not fit all and no one solution will work for all offenders or situations. A small proportion argued that the jail sentences put forward as minimums are simply too severe and punitive in nature. A handful also see MMPs as politically motivated. Among the minority in the survey who consider MMPs to be fair, most argued for equal treatment of all offenders or a general “fairness” of treatment. The second reason for support of MMPs is the need for punishment to condemn the crime and/or ensure deterrence. A small proportion suggests that offenders need to take responsibility for their actions, or simply that “it’s the law”.

Survey results reveal that nearly eight in ten Canadians support a judge’s ability to consider a lesser sentence other than jail or prison in circumstances where it may be appropriate, even for offences that

currently carry MMPs. The same proportion believe it is important that judges are allowed to impose custodial sentences shorter in duration than the mandatory minimum where the facts of the case suggest a lesser sentence may be appropriate.

Nine in ten Canadians feel that Canada should consider giving judges flexibility to impose a lesser sentence than the mandatory minimum. Of these, five in ten suggest that judges should be able to give a lesser sentence only in exceptional circumstances and four in ten feel that there should be no such restriction (judges can decide to go below of any case) Overall, among those least supportive of MMPs, arguments largely centred on the need for flexibility to make the best decisions about sentences based on the individual elements of each case, in order to find the best solution to addressing root causes and keeping society safe by preventing future crime.

Perceived Benefits

Respondents to the first survey were presented with two contradictory arguments to consider for MMPs. Almost six in ten opted for the position that MMPs increase the gap between rich and poor because those with resources are better able to obtain representation, over the argument that such policies improve fairness and equality. Among the minority arguing that MMPs increase fairness, the supporting argument by the majority is that sentences should be consistent for all. A few support MMPs to improve fairness and equality as a method of deterrence, ensuring a penalty and preventing leniency.

Respondents were also presented with the competing arguments that MMPs ensure that sentences are not too light versus the argument that MMPs may be too harsh and may not always be appropriate. By a margin of nearly three-to-one, Canadians lean to the position that guaranteed MMPs do not necessarily lead to fair and appropriate sentencing (69 per cent), although just over one in five said that predetermined sentencing is a measure to ensure consequences are not too light. Among those believing that MMPs may impose sentences that are too harsh and generally not fair, most argued that MMPs eliminate the discretion to consider the circumstances of each individual case (for three out of four respondents). Another one in ten feel it ensures equal treatment in terms of financial access to representation and the system.

Respondents were asked about the perceived effectiveness of MMPs as a deterrent to committing crimes. By a margin of three-to-one respondents rejected the argument that mandatory minimums act as a strong deterrent, compared to one in four who see these policies as an effective deterrent.

According to results of the first survey, just over half of Canadians believe that the use of MMPs increases pressure on the courts, and only one in five see this policy as alleviating pressure on the judicial system.

The contract value for the POR project is \$245,876.70 (including HST).

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POLITICAL NEUTRALITY CERTIFICATION

This certification is to be submitted with the final report submitted to the Project Authority.

I hereby certify as Senior Officer of EKOS Research Associates Inc. that the deliverables fully comply with the Government of Canada political neutrality requirements outlined in the Communications Policy of the Government of Canada and Procedures for Planning and Contracting Public Opinion Research. Specifically, the deliverables do not include information on electoral voting intentions, political party preferences, standings with the electorate, or ratings of the performance of a political party or its leaders.

Signed by: Susan Galley (Vice President)