Independent Report on the Incarceration of Angela Cardinal

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1. INTRODUCTION

On June 16th, 2014, a serious sexual assault took place in Edmonton, Alberta at the apartment of Lance Blanchard, a known sexual offender who had spent 37 of his previous 40 years in custody. There were no witnesses to this attack save for the accused and the victim, whose name is protected by a publication ban. The victim, who is known to the Canadian public by her pseudonym Angela Cardinal, was the key witness in the Crown's case, and her testimony directly led to the conviction of Mr. Blanchard in December of 2016.

Ms. Cardinal's was incarcerated from June 5th to June 10th, 2015, ostensibly to ensure that she would provide testimony at the preliminary inquiry of the accused. During this time, she testified in shackles, and was brought into contact with her attacker. The Authors of this report ("the Authors") have been tasked by the Government of Alberta to review the circumstances of her incarceration, and to make recommendations to ensure that no victim of crime is treated in a similar fashion.

This report will provide recommendations for systemic change, based on the Authors review of the factual and legal background. Any opinions contained within this report are solely those of the Authors, and do not necessarily coincide with those held by Justice and Solicitor General or the Government of Alberta.

2. FACTUAL BACKGROUND

Preface

The Authors have had the opportunity to review a number of documents relating to this case, including the court record from both the preliminary inquiry and trial of Mr. Blanchard, disclosure materials from Crown and Defense counsel, and the decision from the Honourable Justice Macklin. The Authors have also conducted interviews with representatives from the different agencies and justice system participants who played a role in this matter.

The Authors will not be making any findings of fact, or analyzing the actions of those who interacted with Ms. Cardinal, given that Mr. Blanchard's case is still before the Court. Mr. Blanchard has not yet been sentenced, and the Crown has brought an application to designate Mr. Blanchard a dangerous offender which is still ongoing. In addition to this, the Alberta Judicial Council is in the process of reviewing complaints made against the presiding Judge at the preliminary inquiry, Judge Raymond Bodnarek. The Authors do not wish to impact any of these proceedings, and as such will not comment on the facts of this case, save for those details which currently form part of the public record.

For those from a non-legal background, the term victim and complainant will be used interchangeably for Ms. Cardinal, depending on the context. Legally speaking, any person accused of a crime is presumed innocent until their conviction, meaning that a victim of crime will not be called such before a verdict is given. We know with hindsight that Ms. Cardinal was a victim in this case, but she was referred to as the complainant during the proceedings against Mr. Blanchard, who was called 'the accused' until his conviction.

The Facts

Angela Cardinal was twenty-seven years old in June of 2014. An Indigenous woman, she was homeless and living on the streets of Edmonton. She became the victim of a serious sexual assault on June 16th, 2014, at the hands of Lance Blanchard. Mr. Blanchard was arrested on this same date and was taken into custody. His charges were set for a Preliminary Inquiry in the Provincial Court of Alberta, which began on June 1st, 2015, and ended on July 9th, 2015. Ms. Cardinal was the Crown's key witness at this hearing and began her testimony on June 5th, 2015. She was taken into custody under Section 545(1)(b) of the *Criminal Code of Canada* and was incarcerated between June 5th and June 10th, 2015. At the conclusion of this hearing, Mr. Blanchard was committed to stand trial in the Court of Queen's Bench.

Between the end of the preliminary inquiry and the trial of Mr. Blanchard, Ms. Cardinal was tragically shot and killed in an unrelated incident on December 12th, 2015. Ms. Cardinal's testimony from the preliminary inquiry was successfully admitted to the trial, and directly resulted in the conviction of Mr. Blanchard for aggravated sexual assault, kidnapping, unlawful confinement, possession of a weapon, and uttering threats to cause death or bodily harm on December 16th, 2016. The facts which underlie these convictions are set out in the decision of the Honourable Justice Macklin, *R v. Blanchard*, 2016 ABQB 706, at paragraphs 242-250.

In his decision convicting the accused, the Honourable Justice Macklin made the following findings of fact concerning Ms. Cardinal's incarceration:

> The Complainant was living on the street at the time of both the incident in question and the Preliminary Inquiry. While a subpoena was issued for her to attend the Preliminary Inquiry, there was no attempt to serve it on her though there appears to have been a general lookout for her. On June 3rd, 2015, two days before she was required to testify, she was seen by two police officers who happened to be patrolling the inner city. She approached them, as she knew them. She was unaware at that time that she was needed to testify and that a subpoena had been issued for her attendance.
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> The Complainant was taken to police headquarters on June 3rd, 2015. The police found a hotel room for her the night of June 3rd, 2015. She was there when they attended the next morning. They found a hotel room for her the night of June 4th, 2015. Late that evening, the Complainant left the hotel and went to her mother's home. She returned by bus to the hotel and the police were waiting for her. She was not welcome to stay in the hotel as she wanted to have guests. The police took her to her mother's home to sleep. They picked

her up the next morning. Her first appearance at the Preliminary Inquiry was that day, June 5th, 2015. She was clearly distraught and, using her word, 'panicking'. She was somewhat belligerent. Concerns were expressed as to her behavior and whether she would voluntarily re-attend on the following Monday to continue her testimony. To that point, there had not been any incident of her failing to attend when required to do so, as it is clear that she was never served with a subpoena to attend in the first place.

At the conclusion of the Complainant's testimony on Friday, June 5th, 2015, she was remanded into custody on the mistaken belief that she was "a flight risk" and that "she was simply incapable of participating properly in the Court proceedings…", She had been having some difficulty testifying effectively. No one canvassed the possibility at that time of having her monitored by a victim support worker such as Ms. Fleming, or a police officer.

The Complainant was returned to Court to testify on Monday, June 8th, 2015. She was brought into Court wearing shackles and handcuffs. The handcuffs were removed. However, she was not called to testify until late in the afternoon. She apologized for her belligerence on the previous Friday and partially explained her behavior as resulting from the judge having mistakenly called her Ms. Blanchard, the name of the Accused. The Preliminary Inquiry judge then apologized for having made that mistake. She made a point of asking whether she had to go back to Remand as she had "a placement" and that she would not leave that placement if ordered not to. She did not want to go back into Remand and complained about being in shackles, the bad food at the Remand Centre and that "somebody pooped in all… showers". She emphasized that she was the "fricking victim here". She then rightly pointed out that they should have started her testimony early in the morning instead of late in the afternoon to minimize her time in custody.

At the end of the Complainant's testimony on June 8th, 2015, the Court again remanded her. It was clear however that the Court had been misinformed. Contrary to the information before the Court, the Complainant had returned to the hotel on the evening of June 4th. She was then taken to her mother's home by the police where she was found the next morning. She was never missing and had never failed to appear. She told the Court the true facts concerning her whereabouts and asked that she simply be taken to her mother's home. When told of concerns that she would not come back to Court, she responded that she promised to do so. Nevertheless, the Court again remanded the Complainant into custody. She remained in shackles, emphasized again that she was the victim and not surprisingly, said the following:

> "I'm the victim and look at me. I'm in shackles. This is fantastic. This is a great… system"

When told by the Court that it was 'making really good progress' she understandable responded: "Not great progress. Look at me, I'm in shackles." The Complainant was then told that they would begin again the next day at 2:00 p.m because the Accused "needs some emergency dental work done…". Not surprisingly, the Complainant questioned why she must remain in custody and not testify until the afternoon while the Accused went for a dental appointment. Her concern proved justified given that at the conclusion of her testimony on the afternoon of June 9th, 2015, she was once again remanded into custody. Again, she remained in shackles and was handcuffed on her way out.

> Finally acceding to the Complainant's request, the Court allowed her to continue her testimony on the morning of June 10th, 2015 at 9:00am. She testified the entire day, again in shackles, following which she was released from custody.
>
> While it is unclear precisely which days certain events took place, it is clear that on many occasions, she was required to walk right past the Accused in order to exit the courtroom. During normal court adjournments, she was often housed in a cell next to or near that of the Accused. On at least two occasions, she was transported between the Remand Centre and the Courthouse in the same transport van as the Accused. She was shackled throughout her testimony and she was handcuffed when not inside the courtroom. At the Remand Centre, she was often required to pass by the Accused or be near him.[1]

The Honourable Justice Macklin expressed strong disapproval concerning the handling of Ms. Cardinal. Justice Macklin wrote: "…her treatment by the Justice system in this respect was appalling. She is owed an apology." [2] The facts of this case were first reported in the Media in June of 2017, and the resulting outcry from the public led to direct intervention by the Alberta Minister of Justice and the commission of this report

[1] *R v. Blanchard*, 2016 ABQB 706, at paras 228-235.
[2] *R v. Blanchard*, *supra*, at para 347.

3. LEGAL BACKGROUND

It is the opinion of the Authors that the Crown should not have sought an order to incarcerate Ms. Cardinal, as such an order was not available under the *Criminal Code of Canada* (the *Code*). This background is meant to provide a brief analysis on the statutory and common law framework under which Ms. Cardinal was detained.

Any application for incarceration engages an individual's constitutionally protected rights under the *Canadian Charter of Rights and Freedoms* (the *Charter*). Section 7 of the *Charter* states the following: "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."[3] Where an individual's liberty interest is at stake, all justice system participants must be diligent in the exercise of their role, to ensure that an individual's rights are acknowledged and protected. The protection afforded by Section 7 of the *Charter* concerns not just if there is an infringement of an individual's liberty interest, but the extent to which that interest is infringed. Where the proposed deprivation of an individual's liberty is significant, the rationale for that deprivation must be all the more compelling and grounded in solid legal authority.

Ms. Cardinal was detained pursuant to Section 545(1)(b) of the *Code*, which reads as follows:

> *545. (1) Where a person, being present at a preliminary inquiry and being required by the justice to give evidence,*
>
> *(a) refuses to be sworn*
>
> *(b) having been sworn, refuses to answer the questions that are put to him/her*
>
> *(c) fails to produce any writings that he/she is required to produce, or*
>
> *(d) refuses to sign his deposition*
>
> *without offering a reasonable excuse for his/her failure or refusal, the justice may adjourn the inquiry and may, by warrant in Form 20, commit the person to prison for a*

[3] *The Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11 at section 7.

> *period not exceeding eight clear days or for the period during which the inquiry is adjourned, whichever is the lesser period.*[4]

There are two *Criminal Code* provision that allow for the detention of witnesses. Aside from Section 545(1), which pertains specifically to preliminary inquiries, Section 706 of the *Code* allows for a witness to be detained where a warrant has issued for their arrest. Witness warrants can issue under Sections 698(2), 704 and 705, where a person is avoiding service of a subpoena, has absconded or is about to abscond, or has failed to attend court when required to. Unless the witness has been charged with a criminal offence, there is no other authority under the *Criminal Code* or at common law to detain a witness.

The Authors have reviewed jurisprudence relating to both Section 545(1) and Section 706 of the *Code*, and have found no cases with similar facts to Ms. Cardinal's. Where detention was ordered under Section 545(1)(b), the most common factual scenario was where a witness had a relationship with the accused, or feared retribution if they testified.[5] To the knowledge of the Authors, there are only two reported cases where an application to detain a victim of a sexual assault has been brought, in *R v. Wang*, (2003, Ontario) and *R v. Bird* (1999, Saskatchewan).[6] The application was denied in *R. v. Wang*, despite a refusal on the part of the complainant to answer questions at the preliminary inquiry. In *R v. Bird*, a warrant was issued for the complainant when she failed to appear in Court, and she was subsequently released by the Crown upon the execution of that warrant. She refused to testify at the trial of the accused, and after maintaining this position for several days, was held in contempt of Court.

The Authors, having reviewed the facts of this case in detail, have concluded that Ms. Cardinal's detention should not have been sought. Ms. Cardinal never refused to answer questions that were put to her, which is the fundamental requirement for detention under Section 545(1)(b) of the *Code*. Accordingly, her situation is distinguishable from the two known cases where the Crown sought detention of a complainant in a sexual assault case. The Authors were unable to find any similar jurisprudence to the circumstances of this case, and therefore conclude that Ms. Cardinal's detention was not contemplated by any section of the *Criminal Code*.

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[4] *Criminal Code of Canada*, RSC 1985, c C-46, section 545(1).
[5] See the facts in *R v. Whyte*, 2008 SKPC 11; *R v. Seecharran*, 2016 ONSC 7642; *R v. Ervin*, 2001 ABPC 242.
[6] *R v. Wang*, 2003 CarswellOnt 216; *R v. Bird*, 1999 CarswellSask 689.

4. RECOMMENDATIONS OF THE AUTHORS

Preface

The Authors have been tasked to make recommendations to the Alberta Minister of Justice to improve the conduct of Justice and Solicitor General (JSG) in similar situations moving forward. These recommendations will focus on the systemic issues that affected Ms. Cardinal's case, in the hopes that the different participants in JSG can improve and update their policies to address this situation.

Broadly speaking, these recommendations will be addressed to the different JSG organizations, and will be based on their established practices, policies and procedures. These recommendations have been made independently of any cost-analysis or vetting from interested parties, but are designed to identify areas of concern that could have prevented the incarceration of Ms. Cardinal.

Finally, it should be noted that the Authors are working separately but in conjunction with the Witness Management Working Group (WMWG). This group has a broader mandate which includes reviewing the current practices in place for witness management in Alberta, and to consider the current law and policy on victim rights. Many of the recommendations being advanced by the Authors will be similar in scope and nature as those of WMWG, but there is not a perfect overlap between the mandate of each group. The Authors will adopt the wording of recommendations from WMWG where appropriate, but may advance different recommendations based on the unique circumstances of Ms. Cardinal's case.

Overview of Recommendations

1. General Recommendations

    - It is recommended that JSG and other criminal justice entities create or amend vulnerable witness policies, to ensure a coordinated approach that takes into account the supports that vulnerable witnesses may need.
    - It is recommended that all parties within JSG develop guidelines to reinforce the roles and responsibilities of each organization with respect to victim and witness support. In addition, these organizations should work to improve lines of communication, to ensure information is shared appropriately.
    - It is recommended that all parties within JSG be provided with cultural competency training, specifically concerning Indigenous victims and witnesses, and training relating to witnesses who have experienced serious trauma.
    - It is recommended that the practice of having witnesses stand to testify be eliminated in Alberta, especially where that witness is vulnerable.

2. Victim Services

    - It is recommended that JSG create a centralized Victim Services model, similar to models in other Canadian jurisdictions. This would include the creation and funding of dedicated victim service workers to service each jurisdiction in Alberta.
    - It is recommended that the Victim Services Unit (VSU) be separated from EPS and the RCMP, and operate at arms-length from both law enforcement and ACPS.
    - It is recommended that Victim Services include dedicated court workers, to help victims and other vulnerable witnesses navigate the court system.
    - It is recommended that Victim Services hire Indigenous victim services and court workers, who have been specifically trained to address the needs of Indigenous victims and witnesses.
    - It is recommended that the *Victims of Crime Act* be amended to include access to Victim Services as a right, and to clearly outline the relationship between ACPS, law enforcement and Victim Services.

3. Alberta Crown Prosecution Services (ACPS)

    - It is recommended that ACPS clarify their policy concerning pre-trial interactions with complainants. It is further recommended that ACPS mandate pre-trial contact with all complainants in serious and violent cases.

- It is recommended that ACPS update their policy manual concerning the detention of witnesses, to clearly outline the options available to a prosecutor, and delineate where it is appropriate to seek detention under the *Criminal Code*.
- It is recommended that ACPS review their policy concerning the accommodation of witnesses, and coordinate alternative strategies with law enforcement where there are concerns about witness safety and/or flight risk.

4. Edmonton Police Service (EPS)

- It is recommended that EPS require its members to provide information about victim services to all victims they encounter.
- It is recommended that EPS review its policy concerning the accommodation of witnesses, and coordinate with ACPS where appropriate.

5. Alberta Sheriffs Branch/Edmonton Remand Centre

- It is recommended that the Alberta Sheriffs Branch and the Edmonton Remand Centre create policies regarding incarcerated witnesses, and prepare guidelines about how they should be managed.
- It is recommended that the Alberta Sheriffs Branch review their current practices regarding shackling and handcuffing in Edmonton, to determine if those practices comply with their current policies.
- It is recommended that the Alberta Sheriffs Branch review their policy concerning ‘keep separate’ inmates, to ensure that incompatibles are not being housed or transported together.
- It is recommended that an independent review be commissioned to review the current practices respecting the use of physical restraints on witnesses in Edmonton.

General Recommendations

The Authors make the following general recommendations to all justice system participants, both under the authority of Justice and Solicitor General (JSG), and otherwise:

- It is recommended that JSG and other criminal justice entities create or amend vulnerable witness policies, to ensure a coordinated approach that takes into account the supports that vulnerable witnesses may need.
- It is recommended that all parties within JSG develop guidelines to reinforce the roles and responsibilities of each organization with respect to victim and witness support. In addition, these organizations should work to improve lines of communication, to ensure information is shared appropriately.
- It is recommended that all parties within JSG be provided with cultural competency training, specifically concerning Indigenous victims and witnesses, and training relating to witnesses who have experienced serious trauma.
- It is recommended that the practice of having witnesses stand to testify be eliminated in Alberta, especially where that witness is vulnerable.

On a systemic level, the detention and treatment of Ms. Cardinal revealed deficiencies in a number of general areas. Justice and Solicitor General (JSG) encompasses most of the agencies that collectively manage the criminal justice system, including Alberta Crown Prosecution Services, the Alberta Sheriffs Branch, Corrections, and Court Administration. Other criminal justice entities include the Edmonton Police Service, RCMP and Legal Aid Alberta, though the latter is accountable to JSG and the Law Society of Alberta.

The Authors have reviewed policy manuals for ACPS, Alberta Sheriffs, and for Alberta Corrections, as well as the *Code of Conduct* from the Law Society of Alberta. The Authors have not been provided with policy manuals from law enforcement agencies or Legal Aid Alberta, but have reviewed their mission statements and publicly available information concerning their practices. The Authors are of the view that there are no clear guidelines for dealing with vulnerable witnesses, adopting the following definition of vulnerable witnesses set out by the Witness Management Working Group:

> "Vulnerable Witnesses are considered vulnerable when, taking into account their unique personal characteristics or circumstances and the significance of their role in the matter, there is a reasonable likelihood that the individual's participation in the justice system will be significantly diminished or eliminated if accommodations or supports are not made available."

Different factors that may render a witness vulnerable include (but are not limited to) personal characteristics such as age, sexual orientation, mental health, physical health, poverty or homelessness, ethnic or cultural background, and history of physical, sexual or psychological trauma.

Where a witness presents with certain vulnerabilities that prevent them from engaging in the Court process, all participants in the justice system ought to be trained to identify and address those vulnerabilities. For example, one would not expect someone suffering from schizophrenia to testify in the same way as someone without mental health issues. It would be reasonable for that person to have a specifically trained support person present in Court, to ensure that they are able to participate and give their evidence, but that can only happen if the vulnerability is identified and addressed before the case reaches Court. The identification of these vulnerabilities must be the responsibility of all justice system participants, from the early stages of an investigation through to a Court's ultimate decision.

Ms. Cardinal was a vulnerable witness for a number of reasons. She was a young woman who was experiencing homelessness, and who had suffered serious physical, sexual and psychological trauma. She had reported symptoms such as having extreme difficulty sleeping, trust issues, suicidal ideations, and drug use to several Edmonton Police Service (EPS) members, and ultimately to the Court and Crown in her testimony.

The EPS, to its credit, took steps to address these issues and connect Ms. Cardinal with appropriate supports. The involvement of victim support services arose directly because of EPS involvement, as Ms. Rayann Fleming, a victim support worker from the Bissell Centre, became involved during the initial investigation in 2014, and later at the preliminary inquiry of the accused. Ms. Fleming would subsequently recognize the need for culturally appropriate counselling for Ms. Cardinal, and independently contacted Ms. Lorette Goulay, an elder with Ambrose House, during the preliminary inquiry. With that said, Ms. Fleming reports that there was very limited contact between herself and Ms. Cardinal between the assault and preliminary inquiry, and no follow-up was done by EPS on Ms. Cardinal's well-being.

While EPS did their best to accommodate Ms. Cardinal, systemic failures resulted in Ms. Cardinal's vulnerabilities and unique circumstances not being considered in sufficient depth. There were no efforts to maintain contact with Ms. Cardinal after the assault in June of 2014, and

no identification of the barriers she might face in providing her evidence. Serious consideration should have been given to her vulnerabilities, and someone should have canvassed what supports were available to ameliorate her situation. Instead, Ms. Cardinal was incarcerated. There is no indication that she received appropriate supports while in custody at the Edmonton Remand Centre.

The Authors recommend that all participants in the criminal justice system review their policies to ensure that all relevant agencies coordinate and cooperate when dealing with vulnerable witnesses. Ms. Cardinal was forced to testify with two days of preparation, and was clearly dealing with issues that would impede her ability to participate in the Court process. Ideally, Ms. Cardinal would have been contacted from an early date, and connected with counselling and other support services. There should have been regular contact between EPS, the Crown and victim supports about her mental and physical state, and her willingness to participate in the Court process.

The Authors also recommend that JSG review their policies concerning cultural competency and provide additional training where appropriate, particularly with respect to Indigenous issues. Indigenous women are disproportionately represented in the Canadian criminal justice system, both as accused persons and as victims. The Institute for the Advancement of Aboriginal Women (IAAW) and Women's Legal Education and Action Fund (LEAF) have provided submissions to the Authors, which discuss this issue:

> "In a context of inequality, discrimination, and racism, Statistics Canada reports that Indigenous women experience violence victimization at a rate 2.7 times that of non-Indigenous women. Specifically, Indigenous women are targeted for varying forms of violent attacks, including sexual assault (three times that of non-Indigenous women), physical violence (almost double that of non-Indigenous women), and domestic violence (three times that of non-Indigenous women). Indigenous women are also extremely overrepresented among murder victims. While Indigenous people are only 4.3% of the Canadian population, Indigenous women represented 24% of Canadian murder victims in 2015. In sum, Indigenous women and girls face targeted forms of violence and, as a result, are far more likely than other Canadian women and girls to experience violence, to be "disappeared" or be killed."[7]

[7] *Submissions on Independent Review of Circumstances Surrounding the Treatment of Angela Cardinal ("Submissions of IAAW and LEAF)*, IAAW and LEAF (October 15th, 2017), Page 4.

The incarceration and shackling of Ms. Cardinal is one of several recent cases from Alberta involving the mistreatment of Indigenous victims of crime. In *R v. Barton*, the Crown brought the pelvis of the deceased victim, who was an Indigenous woman, into the courtroom to be used as evidence against the accused. The Crown had also ignored procedural protections for complainants of sexual assault, and repeatedly referred to the complainant as both 'a prostitute' and 'a native woman.'[8] In *R v. Wagar*, the trial judge in a sexual assault case asked an Indigenous complainant "…why couldn't you just keep your knees together?", and referred to her as 'the accused' on several occasions.[9] Of note, both of these cases involve Indigenous female victims, where the allegations against the accused concerned sexual violence.

In their submissions, IAAW and LEAF argue that "… relations between Indigenous women and the criminal justice system are in crisis."[10] In the broader context of the above-mentioned cases, and the disproportionate number of Indigenous victims and accused, Ms. Cardinal's case is viewed as a call to action for JSG to repair their relationship with the Indigenous community. The Authors do not believe that the anyone deliberately engaged in racist or discriminatory action towards Ms. Cardinal, as that is not borne out by the court record, but instead believe that systemic bias played a role in the unfolding of the narrative. To ignore this aspect of Ms. Cardinal's case is to ignore the broader problems facing the criminal justice system, and the troubling statistics concerning its treatment of Indigenous women. It is incumbent that every justice system actor be aware of these issues, which starts with appropriate training in cultural competency.

Finally, the Authors recommend that the practice of standing to testify in Alberta be eliminated altogether. To the knowledge of the Authors, no other jurisdiction in the Commonwealth requires witnesses to stand while they are testifying. Ms. Cardinal was a homeless woman who was described as extremely drowsy by all parties who interacted with her. She provided testimony over the course of four days, and gave evidence about a traumatic incident with her attacker in the same courtroom.

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[8] Referenced in *R v. Barton*, 2017 ABCA 216, at paras 117 & 118; *Submissions of IAAW and LEAF*, *supra*, Page 17.
[9] *R v. Wagar*, 2014 CarswellAlta 2756; *Submissions of IAAW and LEAF*, *supra*, Pages 18 & 19.
[10] *Submissions of IAAW and LEAF*, *supra*, Page 19.

The quality of evidence before a Court should not be affected by a witness choosing to stand or sit, and the Authors can see no compelling rationale for continuing this practice. Where a witness is vulnerable or has physical health issues, forcing them to stand to give evidence is even less logical, and may ultimately affect their ability to testify. The Authors recommend that this practice be eliminated entirely, especially in respect of vulnerable witnesses.

Victim Services

The Authors make the following recommendations in respect of Victim Services in the Province of Alberta:

- It is recommended that JSG create a centralized Victim Services model, similar to models in other Canadian jurisdictions. This would include the creation and funding of dedicated victim service workers to service each jurisdiction in Alberta.
- It is recommended that the Victim Services Unit (VSU) be separated from EPS and the RCMP, and operate at arms-length from both law enforcement and ACPS.
- It is recommended that Victim Services include dedicated court workers, to help victims and other vulnerable witnesses navigate the court system.
- It is recommended that Victim Services hire Indigenous victim services and court workers, who have been specifically trained to address the needs of Indigenous victims and witnesses.
- It is recommended that the *Victims of Crime Act* be amended to include access to Victim Services as a right, and to clearly outline the relationship between ACPS, law enforcement and Victim Services.

More so than any other factor, the Authors are of the view that the lack of appropriate victim services led to the incarceration of Ms. Cardinal. Despite being the victim of a serious and traumatic sexual assault, Ms. Cardinal was not referred to victim services offered by EPS, and had no contact with any victim support worker between June 18th, 2014 and June 3rd, 2015. For such a serious criminal charge, and for such a vulnerable victim, it is difficult to imagine how this could be the case.

Every province and territory has its own legislation concerning the rights of victims. In Alberta, the governing legislation for victims of crime is the *Victim of Crimes Act*. This Act mandates a certain relationship between the Government of Alberta and victims of crime, and includes the principles by which victims ought to be treated, similar to those principles outlined in the *Victims of Crime Protocol*. Section 4(1) of the Act requires the government to provide information to victims concerning: a) the status of the investigation against the accused (provided it doesn't harm that investigation), b) the role of the victim and other parties in the offence, c) court procedures and d) any opportunities to make representations to the court on the

impact of the offence.[11] This Act also establishes the Victims of Crime Fund, and sets out the procedure for victims to receive financial benefits from this fund. Similar provisions are found at the federal level in the *Canadian Victims Bill of Rights Act*.[12]

In Edmonton, the Victim Services Unit (VSU) is the only victim support service provided by the Government of Alberta. This unit is housed within the broader structure of the Edmonton Police Service (EPS), and is made up of one EPS Sergeant, six divisional coordinators, one training coordinator and two court administrators. Aside from these paid positions, the remainder of VSU is made up of approximately 112 volunteer victim advocates ("victim advocates"), who are trained to handle all calls for service made to VSU. There is also a victim support program offered through the Bissell Centre, a non-profit organization that receives both public and private funding, which consists of two victim support workers. According to Ms. Fleming, this program is unique to Edmonton, and there are no other dedicated victim support programs in the city.

Every victim advocate must complete between 40-70 hours of online training through a program offered by JSG. Once this training is completed, victim advocates must also complete certain components of basic training with EPS, including training on crime scene safety, and how to read police documents. According to the current Sergeant of VSU, it takes approximately one year for a victim advocate to complete the required training, and VSU offers optional follow-up programs and training sessions. However, victim advocates are volunteers, and are not required to have a specific educational background, nor qualifications in counselling services. Victim advocates are only required to work a minimum of three hours per week.

The mandate of VSU is to provide support, referrals and information to victims of crime. Despite this mandate, it does not have a referral program. All referrals are received in one of two ways: a direct referral from an EPS member, or when a victim calls VSU independently. EPS members are not required to refer victims to VSU, but must provide information to victims if it is requested of them.

In terms of support, VSU's role is to connect victims with different community supports that are available, but they do not provide counselling service themselves. VSU has a program called 'crisis call-out', where two victim advocates will be sent to respond to a victim in crisis,

[11] *Victims of Crime Act*, RSA 2000, c V-3, section 4(1).
[12] *Canadian Victims Bill of Rights Act*, RSC 2015, c 13, sections 6 & 16.

and it is also possible to have victim advocates attend court if specifically requested by a victim. However, the Sergeant of VSU informed the Authors that the vast majority of VSU's caseload consists of a single call with the victim, and victim advocates are not required to continue to check in with victims who have been referred to the program.

The informational component of VSU is to provide victims information concerning the accused's case, such as court dates and the status of the prosecution. However, any information relating to the substance of the case must be referred back to the EPS member investigating the case, as victim advocates do not have the authority to provide that information. The Sergeant of VSU also expressed frustration in terms of information-sharing between support services and EPS, as there are strict privacy obligations that are engaged by virtue of being a law enforcement agency. VSU has memorandums of understanding with certain support organizations, such as the Bissell Centre, that allow them to exchange information about the victim's case, but the scope of these agreements are restrictive by nature. This component of VSU is provincially mandated by the *Victims of Crime Act*, and the Sergeant expressed surprise that this informational service is provided by a volunteer workforce.

The Authors are of the opinion that the current model of victim services in Alberta is wholly inadequate to address the needs of victims. The VSU consists of nine paid employees, and 112 volunteers, to provide services to a city with a population of more than 900,000. There is no referral mechanism to connect victims of crime with VSU, save for discretionary referrals from EPS or by the victim's own initiative. The support provided by VSU generally consists of a single phone call, to refer victims to other community and counselling programs in Edmonton. This service is essentially the same as '211 Edmonton', a 24-hour hotline offered by the Canadian Mental Health Association of Edmonton that connects callers with publicly available services.[13] The information provided by VSU is rudimentary and incomplete, and does not comply with the requirements of Section 4(1)(a) of the *Victims of Crime Act*. The Sergeant of VSU has informed the Authors that a similar victim services program is operated by the RCMP in many rural areas.

The Authors recommend a complete overhaul of the current victim services model in the province of Alberta. The proposed changes include the centralization of all victim services under

[13] *211 Edmonton*, Canadian Mental Health Association, http://edmonton.cmha.ca/211-resource-lists/.

JSG, the separation of victim services from law enforcement agencies, the creation of a victim court worker program, the hiring and training of Indigenous victim services workers and amendments to the *Victims of Crime Act*. Taken together, these changes would provide a much greater level of support to victims, and ensure that no victim falls through the cracks of the justice system.

The Authors have had the opportunity to interview the executive director of Victim Services Manitoba, and recommend a model that mirrors that which is currently in place in Manitoba. Though the Authors have not had the opportunity to speak with representatives from Nova Scotia and Newfoundland & Labrador, it appears that a similar centralized approach has been implemented in those provinces as well. Victim Services Newfoundland is advertised as a free and confidential service for victims of crime, and includes services such as pre-court preparation, information about the court process or accused's case, referrals to community supports and the provision of emotional and short-term counselling to victims.[14] In Nova Scotia, the same services are available through the Provincial Victim Services Program, with the exception of short-term counselling.[15]

A centralized model of victim services would organize all victim services under the authority of JSG, as opposed to law enforcement agencies. The essential feature of this approach would be the creation of dedicated victim support workers, who are qualified to provide general counselling services and interact with persons suffering from trauma, and operate at arms-length from the Crown and law enforcement agencies. To address the systemic issues that disproportionately affect Indigenous victims, this service ought to include designated Indigenous victim support workers, who can provide culturally appropriate counselling to this marginalized demographic. Ideally, victim support workers would be provided information regarding an offence by law enforcement agencies, and contact victims independently where they are the subject of a violent or sexual offence. Referrals to community supports could then be made on a case-by-case basis, depending on the wishes and needs of that victim.

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[14] *Victim Services*, Department of Justice and Public Safety, http://www.victimserviceshelp.ca/index.html.
[15] *Department of Justice – Victim Services Program*, Department of Justice https://novascotia.ca/just/victim_Services/programs.asp.

In addition to the above, it is recommended that victim services include a court worker service, and that the *Victims of Crime Act* be amended to include victim services as a right. It is already recognized that victims need support after an offence occurs, but this support must extend throughout the criminal justice process, to help victims understand the court process and give their evidence. Indigenous court workers should also form part of this program, to make sure that Indigenous victims are not being mistreated or further marginalized by the Court. The *Victims of Crime Act* should also be amended to reflect the approach in other Canadian jurisdictions such as Manitoba, Nova Scotia and Newfoundland & Labrador, where access to victim services is legally enshrined as a right.[16]

There are several distinct advantages to this approach over the current VSU model. Firstly, the separation of victim services and law enforcement would increase the chances of vulnerable victims engaging with community supports. Both Ms. Fleming and Ms. Goulay, as well as other victim support personnel who spoke with the Authors, indicated that many vulnerable victims have a distrust or aversion to police, especially where those victims are of Indigenous background. This model would only require law enforcement to facilitate the initial referral, and assure victims of crime that they are not providing information directly to police, but to qualified support workers. Secondly, the designation of dedicated victim services workers would eliminate inequality of service problems that flow from having a volunteer work force. Under the current model, a victim advocate could theoretically work only three hours per week, and may have no relevant experience dealing with traumatized or otherwise vulnerable victims. This problem can be addressed by the proposed changes, and would ensure an even distribution of services by paid and qualified professionals. Thirdly, dedicated court workers would help to prepare victims for court proceedings, and relieve Crown counsel from explaining procedure or the potential outcomes in a given case. Victims would have a better understanding of their rights and duties in the accused's case, and could feel secure knowing that they have an advocate to help them navigate the court process. Finally, this model could eliminate many of the information-sharing issues faced by VSU. There is a heightened concern for privacy where information is possessed by law enforcement agencies, which is not engaged by an independently operated victim services program, provided that victims agree to have their

[16] *The Victims Bill of Rights Act*, RSM 2000, c 33, section 2(1); *Victims of Crime Services Act*, RSNL 1990, c V-5, section 5(1); *Victims Rights and Services Act*, RSNS 1989, c 14, section 3(1)(b).

information shared with other agencies. This would foster a more integrated victim support network, where agencies are able to work with one another in a coordinated effort to improve the well-being of victims.

The Authors note that a similar victim service model has been implemented in Calgary in the context of domestic violence. Homefront Calgary is a public and privately funded organization dedicated to support victims of domestic violence throughout the court process. While they still rely on the referrals from law enforcement, Homefront works with victims once police have become involved whether charges are laid or not. Specialized caseworkers will meet with victims, and provide services such as "… intervention, risk assessment, safety planning support and referrals."[17] Where charges are laid, Homefront provides court assistance services, and works with victims to ensure they have the information and support they need. Most importantly, Homefront is integrated with other support services in the justice system, and has a close working relationship with these organizations. Almost every justice system participant who met with the Authors identified Homefront as a successful program, and suggested that Edmonton consider this approach to victim services. The Authors suggest that JSG examine the viability of a similar program in Edmonton, and look to Homefront as a victim support program that has had success in Alberta.

Ms. Cardinal had no such supports available to her. Though EPS members connected her with the Bissell Centre, it does not appear that she had any interactions with VSU. She was never prepared for Court, had no access to culturally appropriate services (with the exception of Ms. Goulay), and received no counselling or other services to address the trauma she had suffered. Whether she was dealing with issues relating to drugs or mental health, Ms. Cardinal was clearly experiencing difficulties stemming from her assault at the hands of the accused, which impacted her ability to testify in Court. That Ms. Cardinal had no contact with support services between June 18th, 2014 and June 3rd, 2015 is unacceptable for such a serious criminal case, and one can only imagine what impact victim support and court services would have had on her situation. JSG can take steps to address these issues, and the Authors recommend that they do so.

[17] *Homefront Calgary*, Homefront Calgary, http://homefrontcalgary.com/main/?project=about-dcrt

Alberta Crown Prosecution Services

The Authors make the following recommendations in respect of the policies and practices of Alberta Crown Prosecution Services (ACPS):

- It is recommended that ACPS clarify their policy concerning pre-trial interactions with complainants. It is further recommended that ACPS mandate pre-trial contact with all complainants in serious and violent cases.
- It is recommended that ACPS update their policy manual concerning the detention of witnesses, to clearly outline the options available to a prosecutor, and delineate where it is appropriate to seek detention under the *Criminal Code*.
- It is recommended that ACPS review their policy concerning the accommodation of witnesses, and coordinate alternative strategies with law enforcement where there are concerns about witness safety and/or flight risk.

The Authors have reviewed the *Crown Prosecutors' Policy Manual*, the *Alberta Code of Conduct*, and the *Victims of Crime Protocol*. These documents collectively set out the main policy considerations for Crown Prosecutors, and also include a set of guidelines entitled "Standards of Conduct for Crown Prosecutors". The Authors are of the view that this framework is generally comprehensive, and that many of the mistakes made could have been prevented by consulting these documents. However, the Authors have also identified several issues which do not form part of this policy framework.

Aside from issues relating to the protection of vulnerable witnesses, as outlined in the General Recommendations of this report, the Authors note there is an absence of information concerning pre-trial interactions with complainants. The *Crown Prosecutor's Policy Manual* is essentially silent on this issue, and it is only very briefly addressed in the *Victims of Crime Protocol*, in the portion concerning what to expect during court proceedings:

> "The lawyer that calls you as a witness (the Crown prosecutor or the defense lawyer) may wish to interview you before you appear in court. This is done to review the strength and accuracy of your testimony. If you are a witness, you can ask for a meeting with the Crown prosecutor."[18]

The Authors have also been provided with a supplementary handbook from Alberta Justice, entitled *Best Practices for Investigating and Prosecuting Sexual Assault*. This handbook

[18] *Victims of Crime Protocol,* Justice and Solicitor General, October 2013, Page 27.

was published in April 2013, and was designed to "… better inform police officers, Crown prosecutors, and all those involved in the investigation and prosecution of sexual offences..." This handbook does speak to the issue of witness interactions in sexual assault cases, stating the following:

> "Crown prosecutors should establish communication with the complainant as early as possible and be sure that he/she is informed of important steps in the legal process. By developing the complainant's trust in the Crown's competence and attention to the file, chances are that he/she will be willing to pursue the prosecution. Sex crimes are about power; and through information and support, the Crown can empower the complainant and increase his/her satisfaction with the justice system."[19]

The Authors are of the opinion that this policy, while obviously appropriate in the context of sexual assault, should also be included in the *Crown Prosecutor's Policy Manual* for any crime against the person. Where the alleged offense is of a serious and violent nature, this policy should go even further, and mandate pre-trial contact between the assigned Crown prosecutor and the complainant.

The role of the Crown is to represent the public interest, not the interests of a complainant, but it is often the case that the evidence of the complainant is necessary for the prosecution to proceed. Where a complainant is reluctant to testify, has safety concerns, or otherwise has issues that would affect their testimony, having an established connection with the Crown prosecutor could be the deciding factor that makes them participate in the court process. It may not be feasible for Crown prosecutors to meet with every complainant in every case, but in cases that are both serious and violent, it should be expected that this occurs. There is a heightened public interest in these prosecutions, and the failure to engage with the complainant could result in situations such as Ms. Cardinal's. The *Crown Prosecutor's Policy Manual* should be amended to emphasis pre-trial contact with complainants, and mandate this contact where the charges are serious and violent.

The *Crown Prosecutor's Policy Manual* is also deficient when it comes to the detention of witnesses. Under the heading of "Warrants for the Arrest of Witnesses", the policy manual speaks to detention under Section 706 of the *Criminal Code,* but only where a warrant has

[19] *Best Practices for Investigating and Prosecuting Sexual Assault*, Justice and Solicitor General, April 2013, Page 58.

already been issued for a given witness. Under the heading of "Domestic Violence", the following information is contained:

> "Where there is a reasonable likelihood without the testimony of a reluctant or hostile victim, Crown prosecutors may consider proceeding without requiring the victim to testify and without further sanction. In some circumstances, Crown prosecutors may have no alternative in the interests of the administration of justice, but to ask the court to issue a bench warrant pursuant to s. 705 of the *Criminal Code* for a victim who has failed to attend in answer to a subpoena. Please refer to the Handbook to obtain more information regarding victims of domestic violence and the reasons"[20]

This is the only substantive discussion on this issue in the *Crown Prosecutor's Policy Manual*, and there is no further guidance in the *Domestic Violence Handbook.* There was no discussion of the powers under Section 545(1) of the *Criminal Code* in any of the documents that the Authors were provided.

The Authors are of the view that this policy does not provide sufficient information to Crown prosecutors about when it is appropriate to seek the detention of a witness. There may be many valid reasons why a complainant does not attend court or refuses to participate in the court process. It may be that they are afraid to testify, are fearful for their safety, or simply do not wish the prosecution against the accused to proceed. This policy provides no detail about the types of situations where a Crown prosecutor has 'no alternative' to detention, nor does it outline what those alternatives are. The detention of a witness, especially where that witness is the complainant in a case, should be the measure of last resort, not the default option of a Crown prosecutor when faced with a difficult or absent witness.

Finally, the Authors recommend that ACPS review their policy with respect to providing accommodations for witnesses. Funding for the accommodation of witnesses is undoubtedly an internal matter within ACPS and should not form part of the Crown policy manual, as this document is publicly available. However, ACPS policy ought to set out alternatives to detention that can be pursued by Crown prosecutors, where a witness is deemed a flight risk or has general concerns. Besides the option of paying for the accommodations of witnesses, Crown prosecutors should also give thought to the availability of community supports, or whether the involvement

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[20] *Crown Prosecutors Policy Manual - Domestic Violence Guidelines*, Alberta Justice, https://justice.alberta.ca/programs_services/criminal_pros/crown_prosecutor/Pages/domestic_violence_guideline.aspx.

of police in an escort capacity could alleviate their concerns. The Authors also recommend that ACPS and law enforcement cooperate on this issue, to ensure that all other options have been considered before the Crown takes the drastic step of applying to have a witness incarcerated.

Edmonton Police Service

The Authors make the following recommendations in respect of the policies and practices of the Edmonton Police Service (EPS):

- It is recommended that EPS require its members to provide information about victim services to all victims they encounter.
- It is recommended that EPS review its policy concerning the accommodation of witnesses, and coordinate with ACPS where appropriate.

The Authors are of the view that Ms. Cardinal's incarceration or treatment in custody was neither the fault nor the responsibility of any EPS members. With that said, EPS can improve their approach to better serve the community of Edmonton.

In conjunction with the recommended changes to the delivery of victim services, the Authors recommend that EPS require its members to provide information about victim services to all victims. EPS referrals to victim services are discretionary, and VSU relies entirely on these referrals to connect with victims of crime, unless victims take the initiative themselves. By mandating referrals to victim services, EPS can ensure that all victims who require services are able to access them.

The Authors also recommend that EPS review its policy concerning the accommodation of witnesses, and coordinate with ACPS where accommodations may be at issue. While the responsibility of accommodating witnesses should not fall on the shoulders of law enforcement, there needs to be a clear delineation of obligations between ACPS and law enforcement agencies. Had there been better coordination between ACPS and EPS concerning Ms. Cardinal's situation, one would hope that this problem would have been recognized, and both agencies could have canvassed the availability of other community supports.

Alberta Sheriffs Branch & Edmonton Remand Centre

The Authors make the following recommendations in respect of the policies and practices of the Alberta Sheriffs Branch (Sheriffs) and the Edmonton Remand Centre (ERC):

- It is recommended that the Alberta Sheriffs Branch and the Edmonton Remand Centre create policies regarding incarcerated witnesses, and prepare guidelines about how they should be managed.
- It is recommended that the Alberta Sheriffs Branch review their current practices regarding shackling and handcuffing in Edmonton, to determine if those practices comply with their current policies.
- It is recommended that the Alberta Sheriffs Branch review their policy concerning 'keep separate' inmates, to ensure that incompatibles are not being housed or transported together.
- It is recommended that an independent review be commissioned to review the current practices respecting the use of physical restraints on witnesses in Edmonton.

The Authors have reviewed the policy manual for both Sheriffs and ERC, and conclude that these documents address many of the concerns raised by Ms. Cardinal's treatment in custody. However, the Authors note that neither policy manual makes any delineation between the inmates and the treatment of those who have been arrested on witness warrants or otherwise detained in custody.

Incarceration is viewed as the measure of last resort in the Canadian justice system. When sentencing criminal offenders, Judges must take into account Section 718.2(d) of the *Criminal Code*, which states that "an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances."[21] If incarceration is reserved only for those offenders where all other alternatives have failed, one would hope and expect that special consideration be given to those who have not offended criminally at all. The deprivation of liberty is not limited to whether or not a person is incarcerated, but the terms of that incarceration as well, and whether or not there are less restrictive conditions by which a person can be detained.

[21] *Criminal Code of Canada*, *supra*, section 718.2(d).

Where a witness is taken into custody on a witness warrant, or detained pursuant to Section 545(1) or 706 of the *Criminal Code*, the justice system should differentiate between these detainees and the regular inmate population. The policy manual for both Sheriffs and ERC is silent on this issue, and should be amended to reflect this distinction. The Authors recommend that a committee be formed to create policies on incarcerated witnesses, to see what can be done on an in-custody basis to distinguish witnesses from other inmates. This may include housing witnesses in different units, different policies with respect to physical restraints, or different access to mental health or other services. There are situations where it is appropriate to seek the detention of a witness, but where this is the case, it does not mean they must be treated in the same way as a sentenced prisoner. The Authors defer to those working within Sheriffs and ERC to determine what can feasibly be done to improve the treatment of incarcerated witnesses.

For the Alberta Sheriffs Branch, the Authors additionally recommend that an internal review be conducted, to ensure that the current practices of Sheriffs comply with the direction in the policy manual. In particular, this review ought to determine whether the necessity of physical restraints is being 'continually assessed' by the presiding Sergeant, and whether there are valid security and safety concerns underlying those assessments. It may be the case that shackles and handcuffs are required for most prisoner escorts, but clearly some inmates pose no risk to the safety or security of Sheriffs or the general population. In those cases, the use of physical restraints is unnecessary, and impacts on the *Charter* rights of the inmate. The Authors take no issue with the general policy of Sheriffs, but are concerned that the use of restraints may be seen as the default option as opposed to a discretionary measure. The Authors leave it to the Alberta Sheriffs Branch to determine if this is, in fact, the case.

Additionally, the Authors recommend a similar review be conducted concerning what Sheriffs and the Edmonton Remand Centre institutionally refer to as 'keep separate' or 'incompatible' inmates. There are clear and straightforward policies concerning incompatible inmates that require them to be escorted and housed separately at all times. Given the uncertainty about the level of contact between Ms. Cardinal and Mr. Blanchard, it is recommended that Sheriffs and the ERC conduct a review of their internal practices, to ensure that keep separate inmates have no-contact at any point.

Finally, the Authors recommend that an independent review be conducted on the practices of the Alberta Sheriffs Branch with respect to the use of physical restraints on incarcerated witnesses. There were comments made by the representative of Sheriffs that raised concern for the Authors, as it was suggested that the shackling of incarcerated witnesses is common in the jurisdiction of Edmonton. Policy from both the Alberta Sheriffs Branch and ERC are clear that physical restraints are only to be used when necessary, yet the comments from Sheriffs indicate that this policy may not be followed in practice. This review should assess how frequently physical restraints are used in Court, and whether or not there is a dialogue between Sheriffs and the court about the appropriateness of those restraints.

5. CONCLUSION

It is difficult to summarize all that went wrong in a case such as this. The Canadian justice system is designed to imprison only those who have committed criminal wrongs, and to protect the rights and interests of our most vulnerable citizens. The checks and balances that should have been operating on June 5th, 2015 did not protect Ms. Cardinal, in what can only be described as a complete breakdown of legal protections.

Rather than focus on the many mistakes that were made, Ms. Cardinal's case should be seen as a call to action, to get back to the fundamentals of criminal law. We can never forget that criminal law arose from the need to sanction those who would do wrong, and to protect those who have been wronged. The Authors call on all participants in the criminal justice system to learn from the mistakes that led to Ms. Cardinal's incarceration, and to address the systemic problems that it has revealed.

Throughout the proceedings, Ms. Cardinal's voice was repeatedly ignored. The Authors echo the comments of the Honourable Justice Macklin, that Ms. Cardinal is owed an apology. This apology can no longer be given, due to her tragic death at the hands of another violent offender. Ms. Cardinal was a bright, articulate and inspiring woman, who showed incredible resilience and character in the face of injustice. We offer this report in her memory.